

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. **16-20519** CR - LENARD
18 U.S.C. § 1349
18 U.S.C. § 1341
18 U.S.C. § 1343
18 U.S.C. § 981(a)(1)(C) **7600 GOODMAN**

UNITED STATES OF AMERICA

vs.

JAMES SABATINO,

a/k/a "James Prolima,"

a/k/a "Jimmy Prolima,"

a/k/a "James Harvey,"

a/k/a "Lenny Santiago,"

a/k/a "Jimmy Gutta,"

JORGE DUQUEN,

a/k/a "Hawk,"

VALERIE KAY HUNT,

a/k/a "Val Hunt,"

a/k/a "Val Hunts,"

a/k/a "Valerie Hunter," and

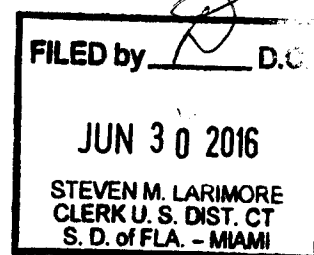
DENISE SIKSHA LEWIS,

a/k/a "Dee Lewis,"

a/k/a "D. Lewis,"

a/k/a "Shug,"

Defendants.



INDICTMENT

The Grand Jury charges that:

COUNT 1

Conspiracy to Commit Mail and Wire Fraud
(18 U.S.C. § 1349)

1. From on or about October 24, 2014, through on or about July 18, 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**JAMES SABATINO,
a/k/a “James Prolima,”
a/k/a “Jimmy Prolima,”
a/k/a “James Harvey,”
a/k/a “Lenny Santiago,”
a/k/a “Jimmy Gutta,”
JORGE DUQUEN,
a/k/a “Hawk,”
VALERIE KAY HUNT,
a/k/a “Val Hunt,”
a/k/a “Val Hunts,”
a/k/a “Valerie Hunter,” and
DENISE SIKSHA LEWIS,
a/k/a “Dee Lewis,”
a/k/a “D. Lewis,”
a/k/a “Shug,”**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with each other and with other persons known and unknown to the Grand Jury, to commit the following offenses:

(a) to knowingly, and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, and attempting to do so, did knowingly cause to be delivered certain mail matter by United Parcel Service (UPS) and Federal Express (FedEx), private and commercial interstate carriers, according to the directions thereon, in violation of Title 18, United States Code, Section 1341; and

(b) to knowingly, and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and

artifice, and attempting to do so, did transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

2. It was the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by obtaining and misappropriating retail items from luxury stores by making materially false and fraudulent representations, and by the concealment of material facts, concerning, among other things, the identities of the defendants and the intended use of the retail items.

MANNER AND MEANS

The manner and means by which the defendants and their co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

3. Defendants **JAMES SABATINO** and **JORGE DUQUEN** were incarcerated together at the Federal Detention Center in Miami, Florida.

4. **JAMES SABATINO** created several e-mail addresses, including jprolima@sonymusicent.com and lsantiago@sonymusicent.com, for the purpose of impersonating an employee of Sony Music Entertainment, a recorded music company.

5. **JAMES SABATINO**, using the alias "James Prolima," contacted several luxury store employees and brand representatives via telephone calls, e-mails, and text messages. During those communications, **SABATINO** pretended to be an employee of Sony Music Entertainment and RocNation, a recorded music company founded by a prominent recording artist.

SABATINO's e-mails to luxury store employees and brand representatives included Sony Music Entertainment and RocNation logos.

6. **JAMES SABATINO** requested that the luxury store employees and brand representatives send retail items such as handbags, wristwatches, apparel, and jewelry to various locations in the Southern District of Florida.

7. **JAMES SABATINO** claimed that the retail items would be featured in music videos and promotional materials that were being filmed and produced in Miami, Florida. **SABATINO** claimed the retail items would be returned to the luxury stores, and signed letters of responsibility promising the return of the retail items.

8. **JAMES SABATINO** instructed the luxury store employees and brand representatives to send the items to defendants **VALERIE KAY HUNT**, **DENISE SIKSHA LEWIS**, and other co-conspirators who were not incarcerated.

9. In some instances, the luxury store employees and brand representatives shipped the retail items via UPS and FedEx. In other instances, the luxury store employees and brand representatives made the retail items available for pick-up by **VALERIE KAY HUNT**, **DENISE SIKSHA LEWIS**, and other co-conspirators.

10. **JAMES SABATINO**, using the alias "James Prolima," arranged for limousine transportation and hotel accommodations for **VALERIE KAY HUNT** and other co-conspirators.

11. Once **VALERIE KAY HUNT** and **DENISE SIKSHA LEWIS** received the retail items, **JAMES SABATINO** and **JORGE DUQUEN** directed **HUNT** and **LEWIS** to sell the items at pawn shops in South Florida and elsewhere.

12. **VALERIE KAY HUNT** and **DENISE SIKSHA LEWIS** deposited a portion of the proceeds from the sale of the fraudulently obtained retail items into the commissary accounts of **JAMES SABATINO** and **JORGE DUQUEN**, during the time period in which both **SABATINO** and **DUQUEN** were incarcerated at the Federal Detention Center in Miami, Florida.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-7
Mail Fraud
(18 U.S.C. § 1341)

1. From on or about October 24, 2014, through on or about July 18, 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

JAMES SABATINO,
a/k/a “James Prolima,”
a/k/a “Jimmy Prolima,”
a/k/a “James Harvey,”
a/k/a “Lenny Santiago,”
a/k/a “Jimmy Gutta,”
JORGE DUQUEN,
a/k/a “Hawk,”
VALERIE KAY HUNT,
a/k/a “Val Hunt,”
a/k/a “Val Hunts,”
a/k/a “Valerie Hunter,” and
DENISE SIKSHA LEWIS,
a/k/a “Dee Lewis,”
a/k/a “D. Lewis,”
a/k/a “Shug,”

did knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, and attempting to do so, did knowingly cause to be delivered certain mail matter by United Parcel

Service (UPS) and Federal Express (FedEx), private and commercial interstate carriers, according to the directions thereon, in violation of Title 18, United States Code, Section 1341.

PURPOSE OF THE SCHEME AND ARTIFICE

2. It was the purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by obtaining and misappropriating retail items from luxury stores by making materially false and fraudulent representations, and by the concealment of material facts, concerning, among other things, the identities of the defendants and the intended use of the retail items.

THE SCHEME AND ARTIFICE

3. Paragraphs 3 through 12 of the Manner and Means section of Count 1 of this Indictment are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

USE OF THE MAILS

4. On or about the dates specified as to each count below, the defendants, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, and attempting to do so, did knowingly cause to be delivered, directly and indirectly, by UPS and FedEx, private and commercial interstate carriers, according to the directions thereon, the items identified below in each count:

COUNT	APPROX. DATE	DESCRIPTION OF MAILING
2	June 19, 2015	One parcel containing retail items mailed by a representative of Alexander Wang, Inc. via FedEx in New York, New York, to Denise at Lewis Vision Studios, in Pompano Beach, Florida
3	June 29, 2015	One parcel containing retail items mailed by a representative of Judith Leiber Couture, Ltd. via FedEx in New York, New York, to Dee Lewis/James Prolima, in Pompano Beach, Florida
4	June 30, 2015	One parcel containing retail items mailed by a representative of Judith Leiber Couture, Ltd. via FedEx in New York, New York, to Dee Lewis/James Prolima, in Pompano Beach, Florida
5	July 9, 2015	One parcel containing retail items mailed by a representative of Nautica via FedEx in New York, New York, to James Prolima, in Davie, Florida
6	July 10, 2015	One parcel containing retail items mailed by a representative of Nautica via UPS in New York, New York, to James Prolima, in Davie, Florida
7	July 10, 2015	One parcel containing retail items mailed by a representative of Tiffany and Company via UPS in New York, New York, to E.M., in Fort Lauderdale, Florida

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 8-14
Wire Fraud
(18 U.S.C. § 1343)

1. From on or about October 24, 2014, through on or about July 18, 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**JAMES SABATINO,
a/k/a “James Prolima,”
a/k/a “Jimmy Prolima,”
a/k/a “James Harvey,”
a/k/a “Lenny Santiago,”
a/k/a “Jimmy Gutta,”
JORGE DUQUEN,
a/k/a “Hawk,”
VALERIE KAY HUNT,
a/k/a “Val Hunt,”
a/k/a “Val Hunts,”
a/k/a “Valerie Hunter,” and
DENISE SIKSHA LEWIS,
a/k/a “Dee Lewis,”
a/k/a “D. Lewis,”
a/k/a “Shug,”**

did knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, and attempting to do so, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds.

PURPOSE OF THE SCHEME AND ARTIFICE

2. It was the purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by obtaining and misappropriating retail items from luxury stores by making materially false and fraudulent representations, and by the concealment of material facts, concerning, among other things, the identities of the defendants and the intended use of the retail items.

THE SCHEME AND ARTIFICE

3. Paragraphs 3 through 12 of the Manner and Means section of Count 1 of this Indictment are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

USE OF THE WIRES

4. On or about the dates specified as to each count below, in the Southern District of Florida, and elsewhere, the defendants, for the purpose of executing, and in furtherance of, the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted, directly and indirectly, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, as more specifically described below:

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
8	June 25, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Cartier USA in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested wristwatches and eyewear for use in a music video production featuring prominent recording artists

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
9	June 25, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Tiffany and Company in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested a handbag and a wristwatch for use in a music video production featuring prominent recording artists
10	June 29, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Judith Leiber Couture, Ltd. in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested a handbag for use in a music video production featuring prominent recording artists
11	June 29, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Judith Leiber Couture, Ltd. in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested tracking information for a package containing Judith Leiber Couture, Ltd. handbags
12	July 8, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Tiffany and Company in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested a wristwatch for use in an album cover artwork production featuring a prominent recording artist

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
13	July 8, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Cartier USA in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested eyewear for use in an album cover artwork production featuring a prominent recording artist
14	July 13, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Audemars Piguet Inc. in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested wristwatches for use in an album cover artwork production featuring a prominent recording artist

In violation of Title 18, United States Code, Sections 1343 and 2.

FORFEITURE
(18 U.S.C. § 981(a)(1)(C))

1. The allegations of this Indictment are realleged and by this reference are fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendants, **JAMES SABATINO, JORGE DUQUEN, VALERIE KAY HUNT**, and **DENISE SIKSHA LEWIS**, have an interest.

2. Upon conviction of a violation of Title 18, United States Code, Sections 1341, 1343, and/or 1349, as alleged in this Indictment, the defendants shall each forfeit to the United States of America any property, real or personal, which constitutes or is derived from proceeds traceable to such violations, pursuant to Title 18, United States Code, Section 981(a)(1)(C).

3. The property subject to forfeiture includes, but is not limited to a forfeiture money judgment and:

- i. Three (3) Judith Leiber Couture clutch bags, seized on or about August 12, 2015;
- ii. Two (2) Audemars Piguet watches, seized on or about August 12, 2015;
- iii. Eleven (11) Tiffany & Co. bracelets and watches, seized on or about August 12, 2015;
- iv. Thirteen (13) Jimmy Choo handbags and shoes, seized on or about August 12, 2015;
- v. Three (3) Alexander Wang tote bags, seized on or about August 12, 2015;
- vi. One (1) Judith Leiber Couture clutch bag, seized on or about August 19, 2015; and
- vii. Ten (10) Jimmy Choo handbags and shoes, seized on or about August 19, 2015.

4. If any of the property described above, as a result of any act or omission of any of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

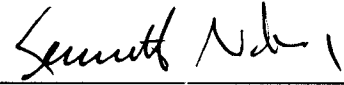
the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461(c), and the procedures set forth in Title 21, United States Code, Section 853.

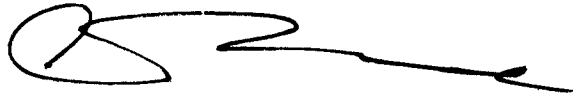
A TRUE BILL



FOREPERSON



WIFREDO A. FERRER
UNITED STATES ATTORNEY



CHRISTOPHER B. BROWNE
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

JAMES SABATINO, et al.,

Defendants.

Superseding Case Information:

Court Division: (Select One)

X Miami _____ Key West
 _____ FTL _____ WPB _____ FTP

New Defendant(s)

Yes _____ No _____

Number of New Defendants _____

Total number of counts _____

I do hereby certify that:

- I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
- Interpreter: (Yes or No) No
List language and/or dialect _____
- This case will take 5 days for the parties to try.
- Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<u>X</u>	Petty	_____
II	6 to 10 days	_____	Minor	_____
II	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V:	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge:

Case No. _____

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

(Yes or No)

No

If yes:

Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

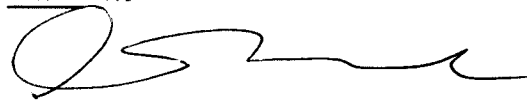
Defendant(s) in state custody as of _____

Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes X No



CHRISTOPHER B. BROWNE
 ASSISTANT UNITED STATES ATTORNEY
 Court ID No. 91337

*Penalty Sheet(s) attached

REV 4/8/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: JAMES SABATINO

Case No: _____

Count #: 1

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 1349

*** Max. Penalty:** Twenty (20) years' imprisonment

Counts #: 2-7

Mail Fraud

Title 18, United States Code, Sections 1341 and 2

***Max. Penalty:** Twenty (20) years' imprisonment as to each count

Counts #: 8-14

Wire Fraud

Title 18, United States Code, Sections 1343 and 2

***Max. Penalty:** Twenty (20) years' imprisonment as to each count

Counts #:

***Max. Penalty:** _____

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: JORGE DUQUEN

Case No: _____

Count #: 1

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 1349

*** Max. Penalty:** Twenty (20) years' imprisonment

Counts #: 2-7

Mail Fraud

Title 18, United States Code, Sections 1341 and 2

***Max. Penalty:** Twenty (20) years' imprisonment as to each count

Counts #: 8-14

Wire Fraud

Title 18, United States Code, Sections 1343 and 2

***Max. Penalty:** Twenty (20) years' imprisonment as to each count

Counts #:

***Max. Penalty:** _____

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: VALERIE KAY HUNT

Case No: _____

Count #: 1

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 1349

* Max. Penalty: Twenty (20) years' imprisonment

Counts #: 2-7

Mail Fraud

Title 18, United States Code, Sections 1341 and 2

*Max. Penalty: Twenty (20) years' imprisonment as to each count

Counts #: 8-14

Wire Fraud

Title 18, United States Code, Sections 1343 and 2

*Max. Penalty: Twenty (20) years' imprisonment as to each count

Counts #:

*Max. Penalty:

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: DENISE SIKSHA LEWIS

Case No: _____

Count #: 1

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 1349

* Max. Penalty: Twenty (20) years' imprisonment

Counts #: 2-7

Mail Fraud

Title 18, United States Code, Sections 1341 and 2

*Max. Penalty: Twenty (20) years' imprisonment as to each count

Counts #: 8-14

Wire Fraud

Title 18, United States Code, Sections 1343 and 2

*Max. Penalty: Twenty (20) years' imprisonment as to each count

Counts #:

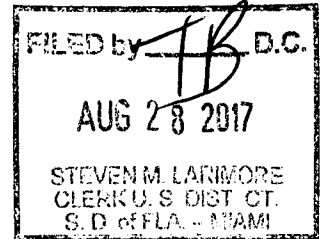
*Max. Penalty:

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-20519-CR-JAL(s)
18 U.S.C. § 1962(d)
18 U.S.C. § 1349
18 U.S.C. § 1341
18 U.S.C. § 1343
18 U.S.C. § 981(a)(1)(C)
18 U.S.C. § 1963



UNITED STATES OF AMERICA

vs.

JAMES SABATINO,
a/k/a "James Prolima,"
a/k/a "Jimmy Prolima,"
a/k/a "James Harvey,"
a/k/a "Lenny Santiago,"
a/k/a "Jimmy Gutta,"
a/k/a "Paul Castellana,"
a/k/a "Samuel Castro,"
a/k/a "Andrew Kronfeld,"
a/k/a "Paul Marino,"

Defendant.

SUPERSEDING INFORMATION

The Acting United States Attorney charges that:

COUNT 1

**Conspiracy to Violate the Racketeer Influenced and Corrupt Organizations Act
(18 U.S.C. § 1962(d))**

At all times material to this Superseding Information:

INTRODUCTION

1. Defendant **JAMES SABATINO** and others known and unknown to the Acting United States Attorney were members and associates of a criminal organization that engaged in a

fraud scheme to obtain valuable items such as clothing, handbags, shoes, and jewelry, and engaged in the interstate transportation of stolen property and in the sale and receipt of stolen goods. Since at least as early as October 2014, this criminal organization operated in the Southern District of Florida, the Northern District of Georgia, and the Southern District of New York, and other locations, to advance the organization's criminal endeavors.

THE ENTERPRISE

2. This criminal organization, including its leadership, membership, and associates, constituted an "enterprise," as defined by Title 18, United States Code, Section 1961(4)(hereinafter "the Enterprise"), that is, a group of individuals associated in fact. The Enterprise was engaged in, and its activities affected, interstate commerce. The Enterprise constituted an ongoing organization whose leaders, members, and associates functioned as a continuing unit for the common purpose of achieving the objectives of the Enterprise.

PURPOSES AND OBJECTIVES OF THE ENTERPRISE

3. The purposes and objectives of the Enterprise included the following:

4. Enriching **JAMES SABATINO** and other members and associates of the Enterprise through, among other things, mail fraud, wire fraud, and interstate transportation of stolen property.

5. Misrepresenting, concealing, and hiding the purposes of, and acts done in furtherance of the conspiracy, and concealing the criminal activities committed by the Enterprise in order to avoid detection.

6. Although the principal purposes of the Enterprise was to generate money for its members and associates and to advance the Enterprise's interests through fraud, **JAMES SABATINO** at times used the resources of the enterprise to settle personal grievances and

vendettas. For those purposes, **SABATINO** asked members and associates of the Enterprise to carry out, among other crimes, acts of violence, including murder.

7. The members and associates of the enterprise engaged in conduct designed to prevent government detection of their identities, disruption of their illegal activities, and the location of proceeds of those activities.

ROLE OF THE DEFENDANT

8. **JAMES SABATINO** was a leader of the Enterprise. **SABATINO** directed and supervised the activities of the other Enterprise members and associates, including the resale of the fraudulently obtained items and the disbursement of the proceeds to other Enterprise leaders, members, and associates.

THE RACKETEERING CONSPIRACY

9. From on or about October 24, 2014, through on or about April 5, 2017, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**JAMES SABATINO,
a/k/a "James Prolima,"
a/k/a "Jimmy Prolima,"
a/k/a "James Harvey,"
a/k/a "Lenny Santiago,"
a/k/a "Jimmy Gutta,"
a/k/a "Paul Castellana,"
a/k/a "Samuel Castro,
a/k/a "Andrew Kronfeld,"
a/k/a "Paul Marino,"**

together with others known and unknown to the Acting United States Attorney, being persons employed by and associated with the above-described Enterprise, which was engaged in and the activities of which affected interstate commerce, did conspire with others known and unknown to the Acting United States Attorney, to violate Title 18, United States Code, Section 1962(c), that is, to knowingly conduct and participate, directly and indirectly, in the conduct of the affairs of the

Enterprise through a pattern of racketeering activity consisting of multiple acts indictable under the following provisions of federal law:

- a. Title 18, United States Code, Section 1341 (mail fraud);
- b. Title 18, United States Code, Section 1343 (wire fraud);
- c. Title 18, United States Code, Section 2314 (interstate transportation of stolen property); and
- d. Title 18, United States Code, Section 2315 (sale and receipt of stolen goods).

10. It was a part of the conspiracy that the defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

METHODS AND MEANS OF THE ENTERPRISE

The methods and means by which the defendant and other members and associates conducted and participated in the conduct of the affairs of the Enterprise included, among others, the following:

11. **JAMES SABATINO** was incarcerated at the Federal Detention Center in Miami, Florida. While incarcerated, **SABATINO** obtained several contraband cellular telephones from correctional officers for the purpose of facilitating the Enterprise's objectives.

12. Using the contraband cellular telephones, **JAMES SABATINO** created several e-mail addresses, including jprolima@sonymusicent.com, lsantiago@sonymusicent.com, pcastellana@sonypicturesinternational.com, scaastro@caaworldwide.com, and an e-mail address associated with the domain name [@umgworldwide.com](http://umgworldwide.com), for the purpose of impersonating entertainment industry employees and executives.

13. **JAMES SABATINO**, using several aliases, contacted luxury store employees, brand representatives, and jewelry store employees via telephone calls, e-mails, and text messages. During those communications, **SABATINO** pretended to be an employee of various entertainment industry companies. **SABATINO**'s e-mails to luxury store employees, brand representatives, and jewelry store employees sometimes included the entertainment industry companies' logos.

14. **JAMES SABATINO** requested that the luxury store employees, brand representatives, and jewelry store employees send items such as handbags, wristwatches, apparel, and jewelry to various locations in the Southern District of Florida.

15. **JAMES SABATINO** told the luxury store employees, brand representatives, and jewelry store employees that the items would be featured in music videos, motion pictures, and promotional materials that were being filmed and produced in Miami, Florida. **SABATINO** promised the items would be returned, and created fraudulent documents, including letters of responsibility and certificates of insurance, for the purpose of defrauding the luxury store employees, brand representatives, and jewelry store employees.

16. **JAMES SABATINO** instructed the luxury store employees and brand representatives to send the items to Enterprise members who were not incarcerated.

17. In some instances, the luxury store employees, brand representatives, and jewelry store employees shipped the items to the Southern District of Florida via UPS and FedEx. In other instances, luxury store employees, brand representatives, and jewelry store employees made the items available for pick-up. In those instances, **JAMES SABATINO** directed Enterprise members to travel to stores in the Southern District of Florida and the Southern District of New York to take possession of the fraudulently obtained items.

18. **JAMES SABATINO** arranged for limousine transportation, air transportation, and hotel accommodations for Enterprise members traveling to, from, and within the Southern District of Florida, the Northern District of Georgia, and the Southern District of New York.

19. Once the Enterprise members received the fraudulently obtained items, **JAMES SABATINO** directed the Enterprise members to sell the items at pawn shops and jewelry stores in the Southern District of Florida and the Northern District of Georgia.

20. Enterprise members and associates deposited a portion of the proceeds from the sale of the fraudulently obtained retail items into **JAMES SABATINO's** commissary account at the Federal Detention Center in Miami, Florida, at **SABATINO's** direction.

21. As a result of the Enterprise's racketeering activities, **JAMES SABATINO** defrauded the victim companies of at least approximately \$9,265,400.00.

22. **JAMES SABATINO** directed Enterprise members to harm and/or kill individuals who, **SABATINO** believed, would testify against him and other Enterprise members, and associates.

23. **JAMES SABATINO** also directed Enterprise members to harm and/or kill individuals who, **SABATINO** believed, stole fraudulently obtained items and fraud proceeds from the Enterprise.

All in violation of Title 18, United States Code, Section 1962(d).

COUNT 2
Conspiracy to Commit Mail and Wire Fraud
(18 U.S.C. § 1349)

1. From on or about October 24, 2014, through on or about July 18, 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**JAMES SABATINO,
a/k/a “James Prolima,”
a/k/a “Jimmy Prolima,”
a/k/a “James Harvey,”
a/k/a “Lenny Santiago,”
a/k/a “Jimmy Gutta,”
a/k/a “Paul Castellana,”
a/k/a “Samuel Castro,
a/k/a “Andrew Kronfeld,”
a/k/a “Paul Marino,”**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with other persons known and unknown to the Acting United States Attorney, to commit the following offenses:

(a) to knowingly, and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, and attempting to do so, did knowingly cause to be delivered certain mail matter by United Parcel Service (UPS) and Federal Express (FedEx), private and commercial interstate carriers, according to the directions thereon, in violation of Title 18, United States Code, Section 1341; and

(b) to knowingly, and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

2. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by obtaining and misappropriating retail items from luxury stores by making materially false and fraudulent representations, and by the concealment of material facts, concerning, among other things, the identity of the defendant and the intended use of the retail items.

MANNER AND MEANS

The manner and means by which the defendant and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

3. **JAMES SABATINO** was incarcerated at the Federal Detention Center in Miami, Florida.

4. **JAMES SABATINO** created several e-mail addresses, including jprolima@sonymusicent.com and lsantiago@sonymusicent.com, for the purpose of impersonating employees of Sony Music Entertainment, a recorded music company.

5. **JAMES SABATINO**, using the alias “James Prolima,” contacted several luxury store employees and brand representatives via telephone calls, e-mails, and text messages. During those communications, **SABATINO** pretended to be an employee of Sony Music Entertainment and RocNation, a recorded music company founded by a prominent recording artist. **SABATINO**’s e-mails to luxury store employees and brand representatives included Sony Music Entertainment and RocNation logos.

6. **JAMES SABATINO** directed that the luxury store employees and brand representatives send retail items such as handbags, wristwatches, apparel, and jewelry to various locations in the Southern District of Florida.

7. **JAMES SABATINO** claimed that the retail items would be featured in music videos and promotional materials that were being filmed and produced in Miami, Florida. **SABATINO** claimed the retail items would be returned to the luxury stores, and signed letters of responsibility promising the return of the retail items.

8. **JAMES SABATINO** directed the luxury store employees and brand representatives to send the items to co-conspirators who were not incarcerated.

9. In some instances, the luxury store employees and brand representatives shipped the retail items via UPS and FedEx. In other instances, the luxury store employees and brand representatives made the retail items available for pick-up. In those instances, **JAMES SABATINO** directed co-conspirators to travel to the stores to pick up the fraudulently obtained items.

10. **JAMES SABATINO**, using the alias "James Prolima," arranged for limousine transportation and hotel accommodations for co-conspirators.

11. Once his co-conspirators received the retail items, **JAMES SABATINO** directed the co-conspirators to sell the items at pawn shops in South Florida and elsewhere.

12. Co-conspirators deposited a portion of the proceeds from the sale of the fraudulently obtained retail items into the commissary accounts of **JAMES SABATINO** at the Federal Detention Center in Miami, Florida.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 3-8
Mail Fraud
(18 U.S.C. § 1341)

1. From on or about October 24, 2014, through on or about July 18, 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**JAMES SABATINO,
a/k/a “James Prolima,”
a/k/a “Jimmy Prolima,”
a/k/a “James Harvey,”
a/k/a “Lenny Santiago,”
a/k/a “Jimmy Gutta,”
a/k/a “Paul Castellana,”
a/k/a “Samuel Castro,
a/k/a “Andrew Kronfeld,”
a/k/a “Paul Marino,”**

did knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, and attempting to do so, did knowingly cause to be delivered certain mail matter by United Parcel Service (UPS) and Federal Express (FedEx), private and commercial interstate carriers, according to the directions thereon.

PURPOSE OF THE SCHEME AND ARTIFICE

2. It was the purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by obtaining and misappropriating retail items from luxury stores by making materially false and fraudulent representations, and by the concealment of material facts, concerning, among other things, the identity of the defendant and the intended use of the retail items.

THE SCHEME AND ARTIFICE

3. Paragraphs 3 through 12 of the Manner and Means section of Count 2 of this Superseding Information are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

USE OF THE MAILS

4. On or about the dates specified as to each count below, the defendant, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, and attempting to do so, did knowingly cause to be delivered, directly and indirectly, by UPS and FedEx, private and commercial interstate carriers, according to the directions thereon, the items identified below in each count:

COUNT	APPROX. DATE	DESCRIPTION OF MAILING
3	June 19, 2015	One parcel containing retail items mailed by a representative of Alexander Wang, Inc. via FedEx in New York, New York, to Denise at Lewis Vision Studios, in Pompano Beach, Florida
4	June 29, 2015	One parcel containing retail items mailed by a representative of Judith Leiber Couture, Ltd. via FedEx in New York, New York, to Dee Lewis/James Prolima, in Pompano Beach, Florida
5	June 30, 2015	One parcel containing retail items mailed by a representative of Judith Leiber Couture, Ltd. via FedEx in New York, New York, to Dee Lewis/James Prolima, in Pompano Beach, Florida
6	July 9, 2015	One parcel containing retail items mailed by a representative of Nautica via FedEx in New York, New York, to James Prolima, in Davie, Florida
7	July 10, 2015	One parcel containing retail items mailed by a representative of Nautica via UPS in New York, New York, to James Prolima, in Davie, Florida
8	July 10, 2015	One parcel containing retail items mailed by a representative of Tiffany and Company via UPS in New York, New York, to E.M., in Fort Lauderdale, Florida

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 9-15
Wire Fraud
(18 U.S.C. § 1343)

1. From on or about October 24, 2014, through on or about July 18, 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

JAMES SABATINO,
a/k/a “James Prolima,”
a/k/a “Jimmy Prolima,”
a/k/a “James Harvey,”
a/k/a “Lenny Santiago,”
a/k/a “Jimmy Gutta,”
a/k/a “Paul Castellana,”
a/k/a “Samuel Castro,
a/k/a “Andrew Kronfeld,”
a/k/a “Paul Marino,”

did knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds.

PURPOSE OF THE SCHEME AND ARTIFICE

2. It was the purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by obtaining and misappropriating retail items from luxury stores by making materially false and fraudulent representations, and by the concealment of material facts, concerning, among other things, the identity of the defendant and the intended use of the retail items.

THE SCHEME AND ARTIFICE

3. Paragraphs 3 through 12 of the Manner and Means section of Count 2 of this Superseding Information are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

USE OF THE WIRES

4. On or about the dates specified as to each count below, in the Southern District of Florida, and elsewhere, the defendant, for the purpose of executing, and in furtherance of, the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted, directly and indirectly, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, as more specifically described below:

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
9	June 25, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Cartier USA in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested wristwatches and eyewear for use in a music video production featuring prominent recording artists
10	June 25, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Tiffany and Company in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested a handbag and a wristwatch for use in a music video production featuring prominent recording artists
11	June 29, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
		representative of Judith Leiber Couture, Ltd. in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested a handbag for use in a music video production featuring prominent recording artists
12	June 29, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Judith Leiber Couture, Ltd. in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested tracking information for a package containing Judith Leiber Couture, Ltd. handbags
13	July 8, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Tiffany and Company in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested a wristwatch for use in an album cover artwork production featuring a prominent recording artist
14	July 8, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Cartier USA in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested eyewear for use in an album cover artwork production featuring a prominent recording artist
15	July 13, 2015	Electronic mail from JAMES SABATINO at jprolima@sonymusicent.com in Miami, Florida, to a representative of Audemars Piguet Inc. in New York, New York, in which SABATINO identified himself as a representative of Sony Music Entertainment and RocNation and requested wristwatches for use in an album cover artwork production featuring a prominent recording artist

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT 16
Conspiracy to Commit Mail and Wire Fraud
(18 U.S.C. § 1349)

1. From on or about February 27, 2017, through on or about April 5, 2017, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

JAMES SABATINO,
a/k/a “James Prolima,”
a/k/a “Jimmy Prolima,”
a/k/a “James Harvey,”
a/k/a “Lenny Santiago,”
a/k/a “Jimmy Gutta,”
a/k/a “Paul Castellana,”
a/k/a “Samuel Castro,
a/k/a “Andrew Kronfeld,”
a/k/a “Paul Marino,”

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with other persons known and unknown to the Acting United States Attorney, to commit the following offenses:

(a) to knowingly, and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, and attempting to do so, did knowingly cause to be delivered certain mail matter by United Parcel Service (UPS) and Federal Express (FedEx), private and commercial interstate carriers, according to the directions thereon, in violation of Title 18, United States Code, Section 1341; and

(b) to knowingly, and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations,

and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

2. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by obtaining and misappropriating luxury retail items and jewelry from retail stores and jewelers by making materially false and fraudulent representations, and by the concealment of material facts, concerning, among other things, the identity of the defendant and the intended use of the retail items.

MANNER AND MEANS

The manner and means by which the defendant and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

3. **JAMES SABATINO** was incarcerated at the Federal Detention Center in Miami, Florida.

4. **JAMES SABATINO** created several e-mail addresses, including pcastellana@sonypicturesinternational.com, scastro@caaworldwide.com, and an email address associated with the domain name @umgworldwide.com, for the purpose of impersonating employees of recorded music companies, motion picture production companies, and a talent agency.

5. **JAMES SABATINO**, using several aliases, contacted several luxury retail and jewelry store employees and brand representatives via telephone calls, e-mails, and text messages. During those communications, **SABATINO** pretended to be an employee of various entertainment

industry companies. **SABATINO**'s e-mails to luxury retail and jewelry store employees and brand representatives sometimes included the entertainment industry companies' logos.

6. In some instances, **JAMES SABATINO** requested that the luxury retail and jewelry store employees and brand representatives send retail items and jewelry to various locations in the Southern District of Florida. In other instances, **SABATINO** requested that the retail items and jewelry be made available for pick-up by **SABATINO**'s co-conspirators.

7. **JAMES SABATINO** claimed that the retail items and jewelry would be featured in music videos, film productions, and promotional materials that were being filmed and produced in Miami, Florida. **SABATINO** claimed the retail items would be returned to the luxury retail and jewelry stores. In furtherance of the fraud scheme, **SABATINO** signed fraudulent documents including certificates of insurance and letters of responsibility promising the return of the retail items.

8. **JAMES SABATINO** instructed the luxury store employees and brand representatives to send the items to co-conspirators who were not incarcerated.

9. In some instances, the luxury store employees and brand representatives shipped the retail items via UPS and FedEx. In other instances, the luxury store employees and brand representatives made the retail items available for pick-up by co-conspirators.

10. Once the co-conspirators received the retail items, **JAMES SABATINO** directed the co-conspirators to sell the items at pawn shops and jewelry stores in South Florida, Atlanta, Georgia, and elsewhere.

11. **JAMES SABATINO** arranged for air transportation and hotel accommodations for his co-conspirators.

12. **JAMES SABATINO**'s co-conspirators deposited a portion of the proceeds from the sale of the fraudulently obtained retail items into **SABATINO**'s commissary account at the Federal Detention Center in Miami, Florida.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 17-22
Mail Fraud
(18 U.S.C. § 1341)

1. From on or about February 27, 2017, through on or about April 5, 2017, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

JAMES SABATINO,
a/k/a "James Prolima,"
a/k/a "Jimmy Prolima,"
a/k/a "James Harvey,"
a/k/a "Lenny Santiago,"
a/k/a "Jimmy Gutta,"
a/k/a "Paul Castellana,"
a/k/a "Samuel Castro,
a/k/a "Andrew Kronfeld,"
a/k/a "Paul Marino,"

did knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, and attempting to do so, did knowingly cause to be delivered certain mail matter by United Parcel Service (UPS) and Federal Express (FedEx), private and commercial interstate carriers, according to the directions thereon.

PURPOSE OF THE SCHEME AND ARTIFICE

2. It was the purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by obtaining and misappropriating retail items from luxury stores

by making materially false and fraudulent representations, and by the concealment of material facts, concerning, among other things, the identity of the defendant and the intended use of the retail items.

THE SCHEME AND ARTIFICE

3. Paragraphs 3 through 12 of the Manner and Means section of Count 16 of this Superseding Information are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

USE OF THE MAILS

4. On or about the dates specified as to each count below, the defendant, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, and attempting to do so, did knowingly cause to be delivered, directly and indirectly, by UPS and FedEx, private and commercial interstate carriers, according to the directions thereon, the items identified below in each count:

COUNT	APPROX. DATE	DESCRIPTION OF MAILING
17	February 27, 2017	One parcel containing retail items mailed by a representative of Salvatore Ferragamo US, via UPS in New York, New York, to Paul Marino, in Miami, Florida
18	February 27, 2017	One parcel containing retail items mailed by a representative of Philipp Plein, via FedEx in New York, New York, to Paul Marino in Miami, Florida
19	February 27, 2017	One parcel containing retail items mailed by a representative of Philipp Plein, via FedEx in Atlanta, Georgia, to Paul Marino in Miami, Florida

COUNT	APPROX. DATE	DESCRIPTION OF MAILING
20	March 15, 2017	One parcel containing jewelry mailed by a representative of a jewelry company located in Beverly Hills, California, via FedEx to "H.K.", in Miami Beach, Florida
21	March 30, 2017	One parcel containing jewelry mailed by a representative of Lorrain Schwartz Jewelers via FedEx in New York, New York, to Paul Castell [sic], in Miami, Florida
22	March 31, 2017	One parcel containing jewelry mailed by a representative of Lorrain Schwartz Jewelers via FedEx in New York, New York, to Paul Castell [sic], in Miami, Florida

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 23-29
Wire Fraud
(18 U.S.C. § 1343)

1. From on or about February 27, 2017, through on or about April 5, 2017, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

JAMES SABATINO,
a/k/a "James Prolima,"
a/k/a "Jimmy Prolima,"
a/k/a "James Harvey,"
a/k/a "Lenny Santiago,"
a/k/a "Jimmy Gutta,"
a/k/a "Paul Castellana,"
a/k/a "Samuel Castro,
a/k/a "Andrew Kronfeld,"
a/k/a "Paul Marino,"

did knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, did

transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds.

PURPOSE OF THE SCHEME AND ARTIFICE

2. It was the purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by obtaining and misappropriating retail items from luxury stores by making materially false and fraudulent representations, and by the concealment of material facts, concerning, among other things, the identity of the defendant and the intended use of the retail items.

THE SCHEME AND ARTIFICE

3. Paragraphs 3 through 12 of the Manner and Means section of Count 16 of this Superseding Information are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

USE OF THE WIRES

4. On or about the dates specified as to each count below, in the Southern District of Florida, and elsewhere, the defendant, for the purpose of executing, and in furtherance of, the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted, directly and indirectly, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, as more specifically described below:

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
23	February 27, 2017	Electronic mail from JAMES SABATINO at pmarino@universalmusicinternational.com in Miami, Florida, to a representative of Salvatore Ferragamo US, in Beverly Hills, California, in which SABATINO identified himself as a representative of Universal Music International and requested a tracking number for a shipment of merchandise and provided shipping address details
24	February 27, 2017	Electronic mail from JAMES SABATINO at pmarino@universalmusicinternational.com in Miami, Florida, to a representative of Salvatore Ferragamo US, in Beverly Hills, California, in which SABATINO confirmed receipt of a tracking number for a shipment of merchandise
25	March 7, 2017	Electronic mail from JAMES SABATINO at scaastro@caaworldwide.com in Miami, Florida, to a representative of Akris in New York, New York, in which SABATINO requested handbags for use in a music video production featuring a prominent recording artist
26	March 13, 2017	Electronic mail from JAMES SABATINO at scaastro@caaworldwide.com in Miami, Florida, to a representative of a jewelry company located in Beverly Hills, California, in which SABATINO identified himself as a representative of a prominent actor and recording artist and requested a diamond bracelet for use in a music video production
27	March 30, 2017	Electronic mail from JAMES SABATINO at pcastellana@sonypicturesinternational.com in Miami, Florida, to a representative of Lorraine Schwartz Jewelers in New York, New York, in which SABATINO identified himself as a representative of a prominent actor and recording artist and requested earrings, a necklace, and a bracelet for use in a music video production

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
28	April 1, 2017	Telephone call between JAMES SABATINO in Miami, Florida, and an employee of Lorrain Schwartz Jewelers in New York, New York, in which SABATINO identified himself as a representative of a prominent recording artist
29	April 2, 2017	Telephone call between JAMES SABATINO in Miami, Florida, and an employee of Lorrain Schwartz Jewelers in New York, New York, in which SABATINO discussed certificates of insurance for a loan of Lorrain Schwartz Jewelers jewelry

In violation of Title 18, United States Code, Sections 1343 and 2.

FORFEITURE
(18 U.S.C. §§ 981(a)(1)(C), 1963)

1. The allegations of this Superseding Information are realleged and by this reference are fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant, **JAMES SABATINO**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Sections 1341, 1343, and/or 1349, as alleged in this Information, the defendant shall forfeit to the United States of America any property, real or personal, which constitutes or is derived from proceeds traceable to such violations, pursuant to Title 18, United States Code, Section 981(a)(1)(C).

3. Upon conviction of a violation of Title 18, United States Code, Section 1962, as alleged in this Information, the defendant shall forfeit to the United States, irrespective of any provision of State law, (1) any interest acquired or maintained in violation of Section 1962; (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which the person has established, operated, controlled, conducted or participated in the conduct of, in violation of Section 1962; and (3) any property

constituting, or derived from, any proceeds obtained, directly or indirectly, from racketeering activity in violation of Section 1962, all pursuant to Title 18, United States Code, Section 1963(a)(1)-(3).

4. The property subject to forfeiture includes, but is not limited to:

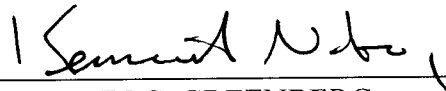
- i. Three (3) Judith Leiber Couture clutch bags, seized on or about August 12, 2015;
- ii. Two (2) Audemars Piguet watches, seized on or about August 12, 2015;
- iii. Eleven (11) Tiffany & Co. bracelets and watches, seized on or about August 12, 2015;
- iv. Thirteen (13) Jimmy Choo handbags and shoes, seized on or about August 12, 2015;
- v. Three (3) Alexander Wang tote bags, seized on or about August 12, 2015;
- vi. One (1) Judith Leiber Couture clutch bag, seized on or about August 19, 2015;
- vii. Ten (10) Jimmy Choo handbags and shoes, seized on or about August 19, 2015;
- viii. Approximately \$32,939 in U.S. currency, seized on or about March 27, 2017;
- ix. Six (6) pieces of miscellaneous jewelry, seized on or about April 19, 2017, including:
 - a. One (1) Stephen Russell, antique silver and white gold, Riviere-style necklace with European and old-mine cut diamonds;
 - b. One (1) Stephen Russell, platinum Art Deco bracelet with diamonds;
 - c. One (1) Martin Katz, rose gold, handmade necklace with diamonds;
 - d. One (1) Martin Katz, white gold, three-chain diamond necklace;
 - e. One (1) pair of Stephen Russell, white gold chandelier, halo-style diamond earrings; and
 - f. One (1) pair of Stephen Russell, white gold chandelier diamond earrings;

- x. Five (5) pieces of miscellaneous jewelry, seized on or about May 11, 2017, including:
 - a. One (1) Lorraine Schwartz, white gold, 5-petal floral ring with diamonds;
 - b. One (1) Lorraine Schwartz, white gold, 8-petal ring with diamonds;
 - c. One (1) Lorraine Schwartz, white gold, dome-style ring with diamonds;
 - d. One (1) Lorraine Schwartz, white gold, diamond-encrusted ring; and
 - e. One (1) Lorraine Schwartz, white gold, diamond-encrusted ring;
 - xi. Two (2) pieces of miscellaneous jewelry, seized on or about May 18, 2017, including:
 - a. One (1) yellow gold, link chain necklace; and
 - b. One (1) white gold, T-shape ring with diamonds;
 - xii. One (1) Akris saddle-colored handbag, seized on or about May 18, 2017;
 - xiii. Four (4) \$500 Western Union money orders that total \$2,000 in U.S. currency in value, seized on or about May 18, 2017;
 - xiv. Four (4) miscellaneous items, seized on or about July 6, 2017, including:
 - a. One (1) Lorraine Schwartz, silver-colored ring with stones;
 - b. One (1) Akris black and white purse;
 - c. One (1) Philipp Plein white-colored purse;
 - d. One (1) Salvatore Ferragamo black-colored purse with gold-colored zipper; and
 - xv. One (1) Akris handbag, seized on or about July 12, 2017.
5. If any of the property described above, as a result of any act or omission of the defendant:
- a. cannot be located upon the exercise of due diligence;
 - b. has been transferred or sold to, or deposited with, a third party;
 - c. has been placed beyond the jurisdiction of the court;

- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 1963(m).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461(c), Title 18, United States Code, Section 1962(a)(1), and the procedures set forth in Title 21, United States Code, Section 853 and Title 18, United States Code, Section 1963.



BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY



CHRISTOPHER B. BROWNE
ASSISTANT UNITED STATES ATTORNEY

CASE NO. _____

CERTIFICATE OF TRIAL ATTORNEY*

Defendant.

Court Division: (Select One)

New Defendant(s) Yes _____ No X
 Number of New Defendants _____
 Total number of counts 29

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

5. Please check appropriate category and type of offense listed below:

6. Has this case been previously filed in this District Court? (Yes or No) Yes

Judge: Joan A. Lenard
(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) Yes

Is this a potential death penalty case? (Yes or No) No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes X No 3

REV 4/8/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: JAMES SABATINO, a/k/a "James Prolima," a/k/a "Jimmy Prolima,"
a/k/a "James Harvey," a/k/a "Lenny Santiago," a/k/a "Jimmy Gutta," a/k/a "Paul
Castellana," a/k/a "Samuel Castro," a/k/a "Andrew Kronfeld," a/k/a "Paul Marino,"

Case No: _____

Count #: 1

Racketeer Influenced and Corrupt Organizations

Title 18, United States Code, Section 1962(d)

*** Max. Penalty:** Twenty (20) years' imprisonment

Count #: 2

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 1349

***Max. Penalty:** Twenty (20) years' imprisonment

Counts #: 3-8

Mail Fraud

Title 18, United States Code, Section 1341

***Max. Penalty:** Twenty (20) years' imprisonment as to each count

Counts #: 9-15

Wire Fraud

Title 18, United States Code, Section 1343

***Max. Penalty:** Twenty (20) years' imprisonment as to each count

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

Count #: 16

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 1349

***Max. Penalty:** Twenty (20) years' imprisonment

Counts #: 23-29

Wire Fraud

Title 18, United States Code, Section 1343

***Max. Penalty:** Twenty (20) years' imprisonment as to each count

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

United States of America

v.

JAMES SABATINO,

Defendant

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)
)
)
)

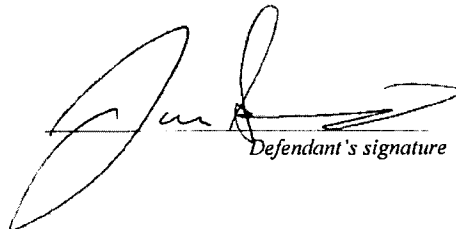
Case No. 16-20519-CR-JAL

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: 08/14/2017



Defendant's signature

Signature of defendant's attorney

JOSEPH S. ROSENBAUM

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-20519-CR-JAL

UNITED STATES OF AMERICA

vs.

JAMES SABATINO,

Defendant.

STIPULATED FACTUAL PROFFER

1. The Defendant, JAMES SABATINO, agrees and understands that in the event the Defendant does not enter a guilty plea under the terms outlined in the stipulated letter of understanding dated August 8, 2017¹, in the above-captioned case:
 - a. The Defendant hereby waives any protection afforded by Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence;
 - b. Any statements made by the Defendant as part of the plea discussions, any debriefings or interviews, or in this agreement, whether made prior to or after the execution of this factual proffer, will be admissible against the Defendant without any limitation in any civil or criminal proceeding brought by the government; and
 - c. The Defendant has adopted the entire factual proffer set forth herein as the Defendant's own sworn statement, and the Defendant has stipulated to the admissibility of that statement in any case brought by the United States.

¹ It is understood by both parties that if the terms specified in the letter of understanding are not offered to the Defendant in a formal Plea Agreement then this Factual Proffer is null and void.

2. The Defendant stipulates to and agrees not to contest the following facts, and stipulates that such facts, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure, would provide a sufficient factual basis for the Defendant's pleas of guilty to the pending charges:

ENTERPRISE

3. At various times relevant to this Indictment JAMES SABATINO ("Defendant"), other co-conspirators set forth below, and others known and unknown were members of a prison-based criminal organization (hereinafter the "Enterprise"). Some of the members and associates of the Enterprise were associated with the Gambino Organized Crime Family of "La Cosa Nostra" ("LCN"). The Enterprise, its members, and its associates engaged in acts of wire and mail fraud, interstate trafficking of stolen property, obstruction of justice, conspiracy to murder, and other criminal activities and operated in the Southern District of Florida, Southern District of New York, and Northern District of Georgia.
4. The Enterprise, including its leadership, membership, and associates, constituted an enterprise as defined in 18 U.S.C. § 1961(4), that is a group of individuals associated in fact. The Enterprise constituted an ongoing organization whose members functioned as a continuing unit for a purpose of achieving the objectives of the Enterprise. This Enterprise was engaged in, and its activities affected interstate and foreign commerce.
5. JAMES SABATINO and the other members:
 - a. Agreed to facilitate a scheme that included the operation and management of the Enterprise by SABATINO. Despite his incarceration, SABATINO remained the sole organizer and leader of the Enterprise;

- b. Conducted regular meetings in person, telephonically, and by any other means of communication at which they discussed, planned, and otherwise engaged in criminal activity, including, fraud, interstate trafficking of stolen property, introduction of contraband into federal prisons, bribery, obstruction of justice, witness intimidation, and murder;
- c. Engaged in a system of “penalties” in which members of the Enterprise conspired to murder, physically harm and threaten those members of the Enterprise who questioned the leadership’s authority, cooperated with law enforcement, or posed a threat to the leader or purpose of the Enterprise;
- d. Recruited inmates in prison, causing them to recruit outside individuals to commit crimes on behalf of the Enterprise;
- e. Committed illegal acts such as conspiracy to murder and threaten violence against individuals who posed a threat to the Enterprise or jeopardized operations, including witnesses to the illegal activities of the Enterprise;
- f. Traveled to South Florida from New York, New York as well as from South Florida to Atlanta, Georgia to further the goals of the Enterprise;
- g. The Enterprise maintained a fund for all expenses of the Enterprise such as bribes of prison officials, purchase of cellular telephones to facilitate crimes, false identification documents, travel expenses, and money for bail bond and legal fees for incarcerated members of the Enterprise;
- h. The Defendant gave a percentage of all fraud proceeds generated by the Enterprise to an associate of the Gambino Organized Crime Family of LCN; and
- i. The Defendant participated in the following acts, among others, in furtherance of the Enterprise and its criminal objectives.

2015 CRIMINAL CONDUCT

6. From on or about, October 24, 2014, through the present the Defendant was incarcerated in the Federal Detention Center in Miami, Florida (“FDC Miami”). The Defendant, JAMES SABATINO, is known by law enforcement to be an associate of the Gambino Organized Crime Family of LCN.
7. Soon after the Defendant’s arrival at FDC Miami, he began to recruit other inmates in an attempt to obtain a cellular telephone to commit crimes. The Defendant was successful in obtaining a Samsung cellular telephone through a federal correctional officer (“Officer # 1”).
8. Using the contraband cellular telephone, the Defendant created several e-mail addresses, including jprolima@sonymusicent.com and lsantiago@sonymusicent.com, for the purpose of impersonating employees of Sony Music Entertainment, a recorded music company.
9. The Defendant, using the alias “James Prolima,” contacted several luxury store employees and brand representatives via telephone calls, e-mails, and text messages. During the course of those wire communications, many of which were transmitted in interstate commerce, the Defendant pretended to be an employee of Sony Music Entertainment and RocNation, a recorded music company founded by a prominent recording artist. Some of the Defendant’s e-mails to luxury store employees and brand representatives included Sony Music Entertainment and RocNation logos.
10. The Defendant requested that the luxury store employees and brand representatives send retail items such as handbags, wristwatches, apparel, and jewelry to various locations in the Southern District of Florida.

11. The Defendant claimed that the retail items would be featured in music videos and promotional materials that were being filmed and produced in Miami, Florida. The Defendant claimed the retail items would be returned to the luxury stores, and signed letters of responsibility promising the return of the retail items.
12. The Defendant directed inmates at FDC Miami to recruit outside persons to commit crimes to further the objectives of the Enterprise.
13. The Defendant instructed the luxury store employees and brand representatives to send the items to co-conspirators Valerie Kay Hunt, Denise Siksha Lewis, and other co-conspirators who were not incarcerated. The Defendant and other incarcerated co-conspirators recruited Hunt and Lewis into the scheme.
14. In some instances, the luxury store employees and brand representatives shipped the retail items to Hunt and Lewis via UPS and FedEx. In other instances, the luxury store employees and brand representatives made the retail items available for pick-up by Hunt, Lewis, and other co-conspirators.
15. The Defendant, using the alias "James Prolima," arranged for limousine transportation and hotel accommodations for Hunt and other co-conspirators.
16. Once Hunt and Lewis received the retail items, the Defendant and Duquen directed Hunt and Lewis to sell the items at pawn shops in the Southern District of Florida and elsewhere.
17. Hunt and Lewis deposited a portion of the proceeds from the sale of the fraudulently obtained retail items into the commissary accounts of the Defendant and Duquen, during the time period in which both the Defendant and Duquen were incarcerated at the Federal Detention Center in Miami, Florida.

18. During the course of the fraud scheme, the Defendant directed fraudulently obtained retail items to be delivered to unindicted co-conspirators, including an associate of the Gambino Organized Crime Family of LCN.
19. Pursuant to the Defendant's directives, a member of the Gambino Organized Crime Family of LCN repeatedly pressured a witness to pay a debt owed to the Enterprise. The debt was assigned to this witness after his efforts to sell high-value stolen property was foiled upon seizure of the property by law enforcement.
20. On July 18, 2015, Bureau of Prisons ("BOP") personnel searched the Defendant's cell at FDC Miami and discovered a Samsung brand cellular telephone and accompanying charging device. A review of the phone conducted pursuant to a federal search warrant revealed evidence that the Defendant extensively communicated with an associate of the Gambino Organized Crime Family of the LCN and other co-conspirators.
21. On July 27, 2015, while in FDC Miami the Defendant communicated during a visit with an associate of the Gambino Organized Crime Family of LCN.
22. Upon the Defendant's release from SHU back to general population, the Defendant directed Officer # 1 to access a secure BOP computer system to obtain the contact information for family members of a co-conspirator.
23. In early 2016, Officer # 1 alerted the Defendant through his sources of an ongoing law enforcement investigation of the Enterprise's conduct. The Defendant immediately communicated this information to non-incarcerated co-conspirators.
24. After the Defendant was charged in connection with this case, the Defendant contacted a fellow inmate (hereinafter, "Inmate #1"), who was scheduled to be released from Federal custody in or around August 2016.

25. On or about August 2, 2016, the Defendant directed Inmate #1 to deliver a message to Co-Conspirator #1. In that message, which was partially communicated in coded writing, the Defendant directed Co-Conspirator #1 to harm or kill co-conspirator Valerie Hunt and a family member of co-conspirator Jorge Duquen.
26. Thereafter, Inmate #1 disclosed to law enforcement the Defendant's attempts to have the above-listed persons harmed or killed.
27. The Defendant learned of Inmate #1's disclosure to law enforcement, and subsequently made contact with Inmate #1 in order to intimidate Inmate #1 and prevent Inmate #1 from testifying against the Defendant.

2017 CRIMINAL CONDUCT

28. In or around February 2017, the Defendant remained incarcerated at FDC Miami while awaiting trial on charges stemming from the above-described fraud-by-impersonation scheme. At FDC Miami, the Defendant approached another BOP correctional officer ("Officer # 2") and asked that officer to supply the Defendant with a cellular telephone. Officer # 2 supplied the Defendant with several cellular telephones, including four Apple-brand iPhones.
29. In addition to supplying the Defendant with the cellular telephones, Officer # 2 was recruited by the Defendant to become a member of the Enterprise. While working under the Defendant's direction, Officer # 2 committed various crimes in furtherance of the Enterprise's objectives.
30. Between approximately March 13, 2017, and April 5, 2017, the Defendant, using the aliases Paul Castellana, Samuel Castro, and Andrew Kronfeld, contacted over six luxury jewelry companies and high-end designer handbag and shoe companies. The Defendant

utilized the above-referenced contraband cellular telephone to create the following email addresses: pcastellana@sonypicturesinternational.com, scastro@caaworldwide.com, and an email address associated with the domain name@umgworldwide.com and @caamusic.com. The Defendant used these e-mail addresses to communicate with the victim jewelry companies. The Defendant also communicated with victims by telephone, including voice calls and text messages. Most of the Defendant's communications with the victim jewelers traveled in interstate commerce.

31. During the course of these communications, the Defendant pretended to be an employee and/or representative of Sony Music Entertainment ("SME"); Sony Pictures International ("SPI"); Creative Artists Agency ("CAA"); and Universal Music Group ("UMG"). The Defendant, using the above-referenced aliases, requested that various luxury jewelry and other designer items be loaned to the Defendant, so that these items could be used as props in video productions featuring prominent recording artists and other celebrities.
32. In reliance on the Defendant's false representations, and at the Defendant's direction, the luxury jewelry companies shipped jewelry to the Defendant's co-conspirators, including Co- Conspirator #1, in Miami, Florida, and elsewhere. The jewelry was never returned to the victim companies. In at least two instances, jewelry was picked up from a luxury jewelry company in New York City, New York, by the Defendant's co-conspirators and transported to other co-conspirators in South Florida. That jewelry was never returned. The Defendant's 2017 scheme resulted in the theft of millions of dollars in jewelry.
33. The Defendant also recruited Officer # 2's wife, and appointed her to be the Enterprise's treasurer. The Defendant further directed Officer # 2's wife to oversee any expenses incurred by the Enterprise.

34. The Defendant, using the contraband cellular telephones, directed co-conspirators, including Co-Conspirator #1, to re-sell the stolen jewelry to certain jewelers located in South Florida, Atlanta, Georgia, and elsewhere. The Defendant communicated extensively with co- conspirators, including Co-Conspirator #1, about the fraud scheme.
35. The Defendant directed Officer # 2 to take two high value necklaces from South Florida to Atlanta, Georgia and to meet with Co-Conspirator # 1. Additionally, the Defendant directed Officer # 2 to collect a large sum of money in possession of Co-Conspirator # 1 and bring it back to South Florida by using his law enforcement credentials to avoid detection of the currency.
36. The Defendant directed Co-Conspirator # 1 to pick up Officer # 2 at the Atlanta airport and transport him to a hotel in Atlanta, Georgia, which the Enterprise was using as its Atlanta base of operations. The Defendant obtained a number of suites using a fraudulent account purportedly associated with Sony Pictures Entertainment. A number of members and associates operated from the hotel suites.
37. On or about April 4, 2017, FBI agents in Miami received information from one of the victims, Lorraine Schwartz Jewelers ("LSJ"), a jeweler located in New York City, New York. LSJ was defrauded by the Defendant of approximately \$700,000 in jewelry. According to LSJ employees, on or about March 30, 2017, a purported SPI executive named Paul Castellana contacted LSJ and successfully secured loans of jewelry for a purported music video shoot in Miami, Florida. Castellana emailed LSJ using pcastellana@sonypicturesinternational.com. On or about March 31, 2017, jewelry was shipped by LSJ via FedEx to a Four Seasons Hotel in Miami, Florida. The LSJ jewelry was never returned to LSJ. After LSJ began to suspect the legitimacy of Paul Castellana's request, LSJ's insurer directed LSJ to record telephone calls with Castellana in an effort


to protect the company against further loss and assist law enforcement. LSJ employees recorded Castellana's voice on several telephone calls. Law enforcement received the audio files from LSJ and listened to the recordings of Castellana's voice. Castellana's voice, as recorded by LSJ, was the Defendant's.

38. On or about April 5, 2017, the Defendant supervised Co-Conspirator # 1 and Co-Conspirator # 2, who were in the process of receiving several million dollars' worth of fraudulently obtained jewelry in two different locations. The combined value of the jewelry was approximately \$3 million dollars.
39. The Defendant directed Co-Conspirator # 1 to deliver both packages to a jeweler in Fort Lauderdale, Florida. While at the jeweler's store, Co-Conspirator # 1 contacted the Defendant over the phone so that the Defendant could negotiate the price directly with the jeweler. The Defendant and the jeweler agreed on the price of \$800,000.00 in cash for both packages which was to be paid immediately to Co-Conspirator # 1.
40. On or about April 5, 2017, while the Defendant was still on the phone with Co-Conspirator # 1, BOP personnel searched the Defendant's cell at FDC Miami. Upon entering the cell, BOP personnel observed the Defendant on the phone. A further search of the Defendant's cell revealed three more phones, for a total of four Apple-brand iPhones and accompanying charging devices. At the time FDC Miami staff seized the iPhones, the Defendant was alone in his cell. A review of the iPhones, conducted pursuant to a Federal search warrant, revealed extensive evidence of the Defendant's involvement in the 2017 fraud scheme and confirmed that the iPhones had been provided to the Defendant by a Bureau of Prisons corrections officer.
41. On April 20, 2017, FDC Miami personnel searched the Defendant's cell and discovered several notes written in the Defendant's handwriting. One of those notes was addressed to

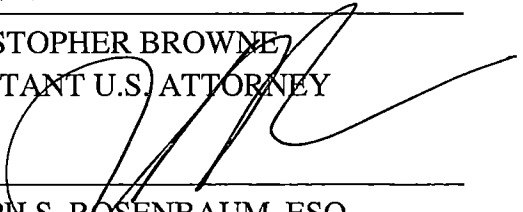
the correctional officer who provided the Defendant with contraband cellular telephones in 2017. In that note, the Defendant directed the correctional officer to take certain steps to conceal evidence of the fraud, including an explicit command to move fraud proceeds out of the officer's house. The Defendant stated that he was "trying to clip" a government witness's family, and further directed the officer to "take care of" government witnesses on the Defendant's behalf.

Date: 9/1/2017

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY

By: 
CHRISTOPHER BROWNE
ASSISTANT U.S. ATTORNEY

Date: 9/1/17

By: 
JOSEPH S. ROSENBAUM, ESQ.
COUNSEL FOR THE DEFENDANT

Date: 9/1/2017

By: 
JAMES SABATINO
DEFENDANT

APPENDIX D

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 16-20519-CR-LENARD

UNITED STATES OF AMERICA,

v.

JAMES SABATINO,

Defendant.

**ORDER GRANTING GOVERNMENT’S AGREED-UPON MOTION
REQUESTING IMPOSITION OF COMMUNICATION RESTRICTIONS
PURSUANT TO 18 U.S.C. § 3582(d) AND IMPOSING RESTRICTIONS ON
DEFENDANT’S COMMUNICATIONS PURSUANT TO 18 U.S.C. § 3582(d)**

THIS CAUSE is before the Court on the Government’s Agreed-Upon Motion Requesting Imposition of Communication Restrictions Pursuant to 18 U.S.C. § 3582(d) (“Motion,” D.E. 269), filed November 13, 2017.¹ The Government filed this Motion in accordance with the terms of the Plea Agreement that Defendant James Sabatino (“Defendant”) and the Government executed on September 1, 2017 (“Plea Agreement,” D.E. 230). In the Plea Agreement, the parties expressly agreed that the Government would ask the Court to include, as part of Defendant’s sentence, an order restricting his communications while incarcerated, pursuant to 18 U.S.C. § 3582(d). In particular, the parties agreed that the Government would request imposition of the following conditions of confinement: (a) Defendant should be confined so that he has no contact with other prisoners; and (b) Defendant’s communications should be restricted from all persons

¹ The Court granted the Motion at the sentencing hearing on November 13, 2017. (See D.E. 271.) This Order adopts and supplements that oral ruling.

inside and outside of prison with the exception of his step-mother, his lawyer, and an employee of his lawyer. The parties also agreed that the Government would request that these restrictions remain in place until Defendant has demonstrated his communications no longer posed a threat, and that this Court retain jurisdiction to consider any applications to modify the aforementioned restrictions. (See Motion at 2 ¶ 3; Plea Agreement at 4 ¶ 7(d).)

Having considered the Government's Agreed-Upon Motion, the Superseding Information ("SI," D.E. 214), the Plea Agreement, Defendant's Stipulated Factual Proffer ("Factual Proffer," D.E. 231) and his sworn testimony at the change of plea hearing on September 1, 2017 ("Plea Hearing," D.E. 229²), the Presentence Investigation Report ("PSI," D.E. 264) setting forth the Defendant's relevant conduct and his criminal history, and the record in this case, and being otherwise fully informed in the premises, the Court **GRANTS** the Government's Agreed-Upon Motion Requesting Imposition of Communication Restrictions Pursuant to 18 U.S.C. § 3582(d) (**D.E. 269**) for the reasons set forth below.

I. Findings of Fact

On September 1, 2017, Defendant pled guilty to one count of conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO"), in violation of 18 U.S.C. § 1962(d). (See SI at 1-6; Plea Hearing.) In support of his guilty plea, Defendant

² Although a transcript of the September 1, 2017 change of plea hearing is not yet available – D.E. 229 merely being the minutes from that hearing, the undersigned recalls the admissions and other sworn statements Defendant made at the hearing that led the Court to conclude that a sufficient factual basis existed to support and accept Defendant's guilty plea and adopt the plea agreement.

signed a stipulated factual proffer admitting that he was the organizer and leader of a prison-based criminal organization that, between October 24, 2014 and April 5, 2017, engaged in acts of wire and mail fraud, interstate trafficking of stolen property, obstruction of justice, conspiracy to murder, and other criminal activities in the Southern District of Florida, Southern District of New York, and Northern District of Georgia. (See Factual Proffer at 2-3; Plea Agreement at 1, 6.) Defendant also admitted that during the course of his criminal activities, he sought to have several co-conspirators and witnesses killed. (See Factual Proffer at 2-3, 6-7, 10-11.) Defendant further admitted that he enlisted a number of other individuals, including other inmates, federal corrections officers, and non-incarcerated co-conspirators, to participate in the aforementioned criminal activities. (Id. at 3-11.) Finally, Defendant's extensive criminal history includes various frauds, swindles, and crimes of violence (see PSI at 29-49); many of these crimes were committed while in federal custody (id. at 18, 40, 42, 46).³

³ The parties also agreed that prior to sentencing, the Government would request, pursuant to 28 C.F.R. § 501.3, that the Bureau of Prisons ("BOP"), through the Attorney General, implement Special Administrative Measures ("SAMs") that restricted Defendant's communications in order to prevent violence and/or physical harm to other persons. (See Motion at 2-3; Plea Agreement at 3-4.) For instance, the parties agreed the Government would ask BOP to restrict Defendant's communications to communications with his step-mother and other approved persons, including defense counsel and staff. (See Motion at 3; Plea Agreement at 4.) The Government complied with this provision of the Plea Agreement and the Attorney General authorized the requested SAMs. (See Motion at 3.) While the SAMs significantly restrict Defendant's communications and contacts with others while he is incarcerated, they permit him access to a greater number of family members and thus are slightly less restrictive than the § 3582(d) restrictions requested now by the parties. (Id. at 3-4.) Recognizing that authorization and implementation of SAMs conditions of confinement are solely within the purview of the executive branch, see 28 C.F.R. § 501.3(a), the Government emphasizes that it is not

II. Discussion

The conditions of a prisoner's confinement are usually determined by the Attorney General through the Bureau of Prisons. See, e.g., 18 U.S.C. § 4001(b)(1) (vesting control and management of the federal prisons in the Attorney General); 18 U.S.C. § 4042 (outlining the duties of BOP, under the Attorney General's direction, which includes managing and regulating all federal prisons and the inmates housed therein); see also United States v. Sotelo, 94 F.3d 1037, 1041 (7th Cir. 1996) (explaining that, pursuant to a congressional grant of authority over the treatment and discipline of federal inmates to BOP, that agency promulgated regulations governing the contact of inmates with persons outside the prisons; those regulations specifically authorize a warden to significantly restrict an inmate's communications with persons outside the prison). However, where specific statutory authority exists, a sentencing court may impose conditions on a prisoner's confinement. See United States v. Felipe, 148 F.3d 101, 109 (2d Cir. 1998) (citing United States v. Huss, 520 F.2d 598, 602 (2d Cir. 1975)).

Here, statutory authority exists for this Court to impose on Defendant the conditions of confinement that the parties are jointly requesting. Specifically, 18 U.S.C. § 3582(d) permits a district court to limit the criminal association of a defendant convicted of racketeering activities. This section provides that a court,

in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title . . . or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United

seeking to modify, overrule, or set aside the SAMs (id. at 4), and nothing in this Order should be construed to have such an effect.

States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

18 U.S.C. § 3582(d). See also Felipe, 148 F.3d at 109.

Defendant was convicted of conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act, in violation of 18 U.S.C. § 1962(d), while he was incarcerated at the Federal Detention Center in Miami. See SI; Plea Agreement at 1; Plea Hearing. He therefore is eligible for Section 3582(d) restrictions. 18 U.S.C. § 3582(d).

The request for Section 3582(d) restrictions comes from the Government, as agreed to by the parties. Based on the facts and the record in this case, the Court finds that there is probable cause to believe that Defendant's association or communication with persons other than his step-mother, his attorneys, or the attorney's staff would enable Defendant to "control, manage, direct, finance, or otherwise participate in an illegal enterprise." 18 U.S.C. § 3582(d).

As Defendant admits, from October 2014 through April 2015, while in prison, he was the sole organizer and leader of a prison-based criminal organization (the "Enterprise") that engaged in acts of wire and mail fraud, interstate trafficking of stolen property, obstruction of justice, conspiracy to murder, and other criminal activities. (See Factual Proffer at 2-3; Plea Hearing.) Defendant and his co-conspirators conducted regular meetings in person, telephonically, and by any other means of communication at which they discussed, planned, and otherwise engaged in criminal activity including the

introduction of contraband into federal prisons, bribery, witness intimidation, and murder. (See Factual Proffer at 3; Plea Hearing.)

During this period, while incarcerated, Defendant repeatedly found ways of recruiting and conspiring with co-conspirators. (See Factual Proffer at 3; Plea Hearing.) Notably, between 2015 and 2017, Defendant recruited three co-defendants, two unindicted co-conspirators, two corrections officers, and various other unidentified co-conspirators who operated at his direction in South Florida, Georgia, and New York. (See Factual Proffer at 3-11; PSI at 8-26.) Defendant also recruited other co-conspirators by enlisting associates and family members of person with whom Defendant was incarcerated. (See Factual Proffer at 3, 5, 7-8; PSI at 11, 24-25.)

While incarcerated, Defendant directed co-conspirators to murder and threaten violence against individuals who posed a threat to him or the Enterprise or jeopardized its operations, including witnesses to the illegal activities of the Enterprise. (See Factual Proffer at 2-3, 6-11; PSI at 8-15, 17-24.) In addition, while incarcerated, Defendant successfully procured five contraband cellular telephones that he used to conduct and direct criminal activity and steal millions of dollars in jewelry and other valuables. (See Factual Proffer at 3-10; PSI at 8-9, 23-24.)

Moreover, Defendant previously organized large-scale fraud schemes at other detention facilities. For example, while incarcerated in New York in 2002, Defendant was able to recruit a network of co-conspirators over the course of six months, coercing and threatening these accomplices when they refused to carry out his orders. (PSI at 44-46.) Despite BOP's efforts, Defendant has not ceased his criminal activities -- which

include multiple attempts to have co-conspirators, witnesses, and witnesses' family members killed or injured. (See id. at 25-26; Factual Proffer at 7, 10-11.)

The special conditions of confinement that the parties are proposing are severe. Defendant essentially agreed to solitary confinement and a prohibition on communicating with everyone but his stepmother and two attorneys (at least until he is able to demonstrate his communications no longer pose a threat). Nonetheless, the Government points out that “[t]he parties [] agree that these restrictions, although severe, are appropriate given Defendant’s history and propensity for recruiting co-conspirators through fellow inmates, corrections officers, and persons who are not incarcerated.” (See D.E. 269 at 9.)

In Felipe, the Second Circuit upheld the imposition of special conditions of confinement similar to those that the parties propose in this case. 148 F.3d 101. The defendant in Felipe was the leader of a violent gang who was convicted of participating in racketeering activities while incarcerated. Id. at 109. The district court sentenced the defendant to life in prison and, pursuant to Section 3582(d), ordered that he be prohibited from communicating with everyone but counsel and close family members. Id. at 107.

On appeal, the defendant argued the sentencing court was without authority to impose such stringent conditions of confinement, having failed to identify “a specified person” with whom he was forbidden to communicate, as required by Section 3582(d). Id. at 109. The Second Circuit acknowledged that the language of the statute was not broad, but concluded that the order below did not fall outside the strictures of the statute. Id. at 110. As the Court explained:

We do not believe Congress expected sentencing courts to list every individual of a racketeering organization in cases where sufficient reason exists to believe that association with any member is for the purpose of participating in an illegal enterprise. Racketeering groups are often large and boast a constantly changing membership. It would be difficult, if not virtually impossible, to identify each and every active member of such an organization. The purpose of § 3582(d) “is to prevent the defendant from continuing his illegal activities from his place of confinement.” The conditions imposed upon Felipe were reasonably formulated to accomplish that objective.

Id. (emphasis in original; internal citation omitted).

The Court finds that the proposed restrictions on Defendant’s communications are reasonably formulated to prevent him from using his powers of association to continue his illegal activities while in prison.

III. Conclusion

Accordingly, it is **ORDERED AND ADJUDGED** that the Government’s Agreed-Upon Motion Requesting Imposition of Communication Restrictions Pursuant to 18 U.S.C. § 3582(d) (**D.E. 269**) is **GRANTED** as follows:

1. The Court **ORDERS** the following conditions of confinement for Defendant James Sabatino:

a. Defendant should be confined, within the U.S. Marshals Service/BOP/detention facility’s reasonable efforts and existing confinement conditions, so that he has no contact with other prisoners;

b. Defendant should be limited, within the U.S. Marshals Service/BOP/detention facility’s reasonable efforts and existing confinement conditions, from having contact (including passing or receiving any oral, written, or recorded

communications) with any other inmate, visitor, attorney, or anyone else, that could reasonably foreseeably result in Defendant communicating (sending or receiving) information that could allow Defendant to circumvent the Court's intent of significantly limiting Defendant's ability to control, manage, direct, finance, or otherwise participate in an illegal enterprise;

c. The restrictions specified above should permit Defendant's contacts and communications with the following persons:


- i. Carol Fardette, Defendant's step-mother;
- ii. Joseph S. Rosenbaum, Esq., Counsel for Defendant; and
- iii. Kimberly Acevedo, Esq., Co-Counsel for Defendant; and

d. The restrictions specified above shall remain in place until Defendant demonstrates his communications no longer pose a threat.

2. This Order is not intended to affect, in any way, the Attorney General's order authorizing the Bureau of Prisons to implement, pursuant to 28 C.F.R. § 501.3, Special Administrative Measures (SAMs) relating to Defendant's confinement that are reasonably necessary to protect persons against the risk of death or serious bodily injury.

3. The Court retains jurisdiction to consider any applications made by Defendant, Defendant's attorneys, or the Government to modify these special conditions of confinement.

DONE AND ORDERED in Chambers at Miami, Florida this 20th day of
November, 2017.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-20519-CR-JAL(s)

UNITED STATES OF AMERICA

vs.

JAMES SABATINO,

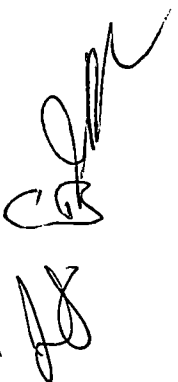
Defendant.

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida ("this Office") and James Sabatino (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to Count 1 of the superseding information, which count charges that from on or about October 24, 2014, through on or about April 5, 2017, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant, together with others persons employed by and associated with a criminal enterprise that was engaged in and the activities of which affected interstate commerce, did conspire with others known and unknown to the Acting United States Attorney, to violate Title 18, United States Code, Section 1962(c), that is, to knowingly conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity consisting of multiple acts indictable under the following provisions of federal law: Title 18, United States Code, Section 1341 (mail fraud); Title 18, United States Code, Section 1343 (wire fraud); Title 18, United States Code, Section 2314 (interstate transportation of stolen property); and Title 18, United States Code, Section 2315 (sale and receipt of stolen goods). Count 1 further alleges that it was a part of the conspiracy that the defendant agreed that a conspirator would commit at least two acts of racketeering activity in the

~~Title 18, United States Code Section, Section 1117 (conspiracy to commit murder); Title 18, United States Code Section, Section 1512 (tampering with a witness); Title 18, United States Code Section, Section 201 (bribery of a public official, to wit: a federal corrections officer); Title 18, United States Code Section, Section 1791 (providing or possessing contraband in prison); []~~



conduct of the affairs of the enterprise. All in violation of Title 18, United States Code, Section 1962(d).

2. This Office agrees to seek dismissal of counts 2 through 29 of the superseding information, as to this defendant, after sentencing.

3. The defendant is aware that the sentence will be imposed by the Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory Sentencing Guidelines range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that, as to count 1, the Court may impose a statutory maximum term of imprisonment of up to twenty years, followed by a term of supervised release of up to three years. In addition to a term of imprisonment and supervised

release, the Court may impose as a maximum fine the greater of (a) \$250,000 and (b) twice the gross pecuniary loss incurred by the victims in this case. The defendant acknowledges that restitution must also be imposed.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 4 of this agreement, a special assessment in the amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing. If the defendant is financially unable to pay the special assessment, the defendant agrees to present evidence to this Office and the Court at the time of sentencing as to the reasons for the defendant's failure to pay.

6. This Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. Acknowledging that the parties' recommendations as to sentencing are not binding on the probation office or the Court, this Office and the defendant agree that, at sentencing:

- (a) this Office and the defendant shall jointly recommend that:
 - i. the defendant be designated to the Bureau of Prisons' ("BOP['s]") USP Florence ADMAX facility in Florence, Colorado;
 - ii. ~~the defendant be prevented from communicating with anyone other than his step-mother, Carol Fardette, and undersigned counsel, Joseph S. Rosenbaum and his staff during the term of imprisonment;~~

iii. ~~the defendant be prevented from communicating with other inmates during the term of imprisonment.~~

(b) this Office shall, pursuant to 28 C.F.R. §§ 501.3, request imposition by BOP of Special Administrative Measures ("SAM"), to wit: communications restrictions, which are intended to prevent violence and/or physical harm to other persons. Specifically, this Office will request that BOP restrict the defendant's communications to non-legally privileged telephone calls and correspondence with his step-mother, Carol Fardette, and others as approved by this Office.

In addition, this Office will seek SAM restrictions that permit the defendant to communicate with undersigned defense counsel and his staff;

This Office shall also request the defendant be restricted from communicating with other inmates during the term of his imprisonment;

(c) this Office ^{shall} ~~agrees to~~ continue to request imposition by BOP of SAM restrictions and that said restrictions be renewed every year and enforced until such time as the defendant unequivocally demonstrates that he will not threaten or do violence and/or physical harm to other persons;

18 U.S.C. 3582(d) Motion:

(d) this Office agrees to file prior to sentencing a motion, pursuant to Title 18, United States Code, Section 3582(d), requesting imposition of certain conditions of imprisonment including the ^{following:} ~~conditions set out in paragraph 7(a) of this Agreement;~~

(e) this Office agrees to submit a written request to BOP requesting that the defendant be designated to BOP's USP Florence ADMAX facility in Florence, Colorado;

(f) this Office agrees that it will not oppose the defendant's motion to continue sentencing in this case to November 4, 2017; and

(g) this Office agrees ~~that, should the Court (i) accept this Office's recommendations as to the loss amount under Section 2B1.1(b)(1) of the guidelines, and (ii) take into account, under Section 1B1.3(a) of the guidelines, the defendant's relevant fraudulent conduct in 2017 in~~

i. The Defendant should be confined during the time of his incarceration so that he has no contact with other prisoners;

ii. Defendant's communication are restricted from all persons inside and outside of prison, except for:

a. Carol Fardette, the Defendant's step-mother,

b. Joseph S. Rosenbaum, Counsel for the Defendant, and

c. Kimberly Acevedo, Paralegal for the Defendant.

iii. These restrictions shall remain

under such time as when the Defendant demonstrate

his communication s no longer pose a threat.

iv. The Court will retain jurisdiction to consider any applications modify these special conditions of confinement.

~~imposing the defendant's sentence, this Office will not seek additional charges against the defendant based on that 2017 conduct.~~
~~[OR] for the alleged assault and battery against a United States deputy marshal on or around May 11, 2017.~~

8. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, this Office, or the probation office, is a prediction, not a promise, and is not binding on this Office, the probation office or the Court. The defendant understands further that any recommendation that this Office makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw the defendant's plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, this Office, or a recommendation made jointly by the defendant and this Office.

9. In the event the defendant withdraws from this agreement prior to or after pleading guilty to the charge identified in paragraph 1 above, this Office shall be released from its obligations under this agreement, and the defendant agrees and understands that:

(a) the defendant thereby waives any protection afforded by Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence;

(b) that any statements made by the defendant as part of the plea discussions, any debriefings or interviews, or in this agreement, whether made prior to or after the execution of this agreement, will be admissible against him without any limitation in any civil or criminal proceeding brought by the government; and

(c) the defendant has adopted the Stipulated Factual Proffer executed by the defendant on August 8, 2017 (the "Proffer"), as the defendant's own sworn statement, and the defendant has stipulated to the admissibility of that statement in any case brought ^{against the defendant} by the United States.

10. This Office and the defendant stipulate to and agree not to contest the facts contained in the Proffer, and stipulate that such facts, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure, provide a sufficient factual basis for the defendant's plea of guilty in this case.

11. The defendant agrees to forfeit to the United States, voluntarily and immediately, all property, real or personal, which constitutes or is derived from proceeds traceable to count 1 of the superseding information. Such property includes, but is not limited to, and the retail items listed in the forfeiture allegations of the superseding information. The defendant agrees to consent to the entry of orders of forfeiture for such property and a forfeiture money judgment equal in sum to the proceeds traceable to count 1. The defendant admits and agrees that the conduct described in the superseding information and the Proffer provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. The defendant agrees that the United States shall, at its option, be entitled to forfeiture of any property (substitute assets) of the defendant to satisfy the money judgment. The defendant also agrees to assist this Office in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in all assets, including real and personal property, cash and other monetary instruments, wherever located, which the defendant ~~or others to the~~ ^{has} ~~defendant's knowledge have~~ accumulated as a result of illegal activities. Additionally, the defendant agrees to identify as being subject to forfeiture all such assets, and to assist in the transfer

of such property to the United States by delivery to this Office upon this Office's request, all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to said property.

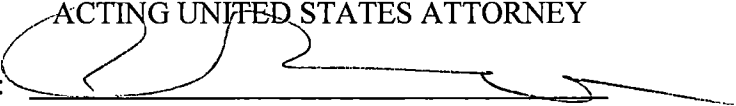
12. The defendant knowingly and voluntarily agrees to waive any claim or defense the defendant may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited property and money judgment. The defendant agrees to waive the right to a jury trial on the forfeiture. The defendant agrees to waive any appeal for the forfeiture and the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the superseding information, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant further agrees to waive any applicable time limits for the initiation of administrative forfeiture and/or any further notification of any judicial or administrative forfeiture proceedings brought against property subject to forfeiture based on the allegations in the superseding information.

13. The defendant is aware that Title 18, United States Code, Section 3742 and Title 28, United States Code, Section 1291 afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Sections 3742 and 1291 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United


States Code, Section 3742(b) and Title 28, United States Code, Section 1291. However, if the United States appeals the defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with the defendant's attorney.

14. This is the entire agreement and understanding between this Office and the defendant. There are no other agreements, promises, representations, or understandings.

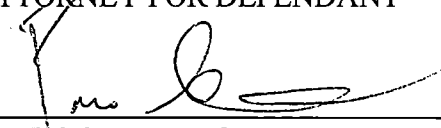
Date: 9/1/2017

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY
By: 
CHRISTOPHER BROWNE
ASSISTANT U.S. ATTORNEY

Date: 9/1/17

By: 
JOSEPH S. ROSENBAUM, ESQ.
ATTORNEY FOR DEFENDANT

Date: 9/1/2017

By: 
JAMES SABATINO
DEFENDANT

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-20519-CR-JAL

UNITED STATES OF AMERICA

vs.

JAMES SABATINO,

Defendant.

STIPULATED LETTER OF UNDERSTANDING

The United States Attorney's Office for the Southern District of Florida, Defendant, JAMES SABATINO, and counsel for the Defendant, Joseph S. Rosenbaum, Esquire, agree and understand that in order to enforce the Stipulated Factual Proffer signed on August 8, 2017, the Plea Agreement presented to the Defendant in this instant case must include the following terms:

1. The Defendant agrees to plead to a criminal charge of racketeering in violation of 18 U.S.C. § 1962, et seq., which charge will carry a twenty-year statutory maximum term of imprisonment.
2. The Government will recommend the Defendant be designated to the Bureau of Prisons ("BOP") USP Florence ADMAX facility in Florence, Colorado.
3. The Government agrees to file a motion pursuant to 18 U.S.C. § 3582(d) for special conditions of confinement, to wit:
 - a. The Defendant be prevented from communicating with anyone other than his step-mother, Carol Fardette, undersigned counsel, Joseph S. Rosenbaum, and paralegal Kimberly Acevedo during the term of his imprisonment;
 - b. The Defendant be prevented from communicating with other inmates during the term of his imprisonment; and
 - c. These conditions continue under such time as the Defendant unequivocally demonstrate he will not threaten or do violence and/or physical harm to other persons.
4. The Government shall, pursuant to 28 C.F.R. § 501.3, request imposition by BOP of Special Administrative Measures ("SAM"), to wit: communication restrictions, which are intended to prevent violence and or intentional harm to other persons. Specifically, the Government shall request the SAMs to include the Defendant's communications be limited to non-legally privileged telephone calls and written correspondence with his step-mother Carol Fardette, and legal communication with attorney Joseph S. Rosenbaum and paralegal Kimberly Acevedo. Additionally, the SAMs shall restrict all communication with other inmates. The Government agrees to request the SAMs

restrictions be renewed and enforced every year until such time as the Defendant unequivocally demonstrates that he will not threaten or do violence and/or physical harm to other persons.

The Government understands that the Defendant will not execute the Plea Agreement until SAMs restrictions are in place by the Attorney General / BOP. It is further understood that in the event the SAMs restrictions are denied, the Stipulated Factual Proffer signed by the Defendant on August 8, 2017, is null and void.

Notwithstanding the Court's recommendation in the Judgment and Commitment, the Government agrees to also send a written request from their office to BOP that the Defendant be designated to Florence ADMAX.

The Government will not oppose a defense motion to continue sentencing in this case until after the Defendant completes his state sentence on November 4, 2017.

If the Stipulated Factual Proffer is void for any of the reasons stated above, the Defendant reserves all the rights and protections afforded to him by §1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Criminal Rules of Procedure, and Rule 410 of the Federal Rules of Evidence.

Date:

9/1/2017

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY

By: 

CHRISTOPHER BROWNE
ASSISTANT U.S. ATTORNEY

Date:

9/1/17

By: 

JOSEPH S. ROSENBAUM, ESQ.
COUNSEL FOR THE DEFENDANT

Date:

8/8/17

By: 

JAMES SABATINO
DEFENDANT

APPENDIX G

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
JAMES SABATINO

JUDGMENT IN A CRIMINAL CASE

Case Number: **16-20519-CR-LENARD(s)**
USM Number: **30906-004**

Counsel For Defendant: **Joseph Rosenbaum/Kimberly Acevedo**
Counsel For The United States: **Christopher Browne**
Court Reporter: **Gizella Baan-Proulx**

The defendant pleaded guilty to count 1 of the Superseding Information

The defendant is adjudicated guilty of these offenses:

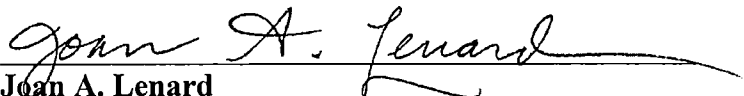
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 1962(d)	Conspiracy to Violate the Racketeer Influenced and Corrupt Organizations Act (RICO)	4/5/17	1

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed on the motion of the government.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: **11/13/2017**


Joan A. Lenard
United States District Judge

Date: 11/20/17

DEFENDANT: JAMES SABATINO
CASE NUMBER: 16-20519-CR-LENARD

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **240 months as to count 1, which shall run consecutive to the following cases: 98-6147-CR-Scola, 99-114-CR-Scola, 13-60040-TP-Scola, and 11th Judicial Circuit State of Florida cases F14-587, F13-23163, F13-22901, F13-22899.**

The court makes the following recommendations to the Bureau of Prisons: Defendant be designated to Florence ADMAX in Florence, Colorado.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAMES SABATINO

CASE NUMBER: 16-20519-CR-LENARD

SPECIAL CONDITIONS OF CONFINEMENT PURSUANT TO TITLE 18 § 3582(d)

Granting the Government's Agreed Upon Motion (D.E. 269), pursuant to the attached Order and Imposing Association/Communication Restrictions Pursuant to 18 § 3582(d) (D.E. 286), the Court Orders:

1. The Defendant shall be confined within the U.S. Marshals Service/BOP detention facility's reasonable efforts and existing confinement conditions, so that he has no contact with other prisoners;
2. The Defendant shall be limited, within the U.S. Marshals Service/BOP detention facility's reasonable efforts and existing confinement conditions, from having contact (including passing or receiving any oral, written or recorded communications) with any other inmate, visitor, attorney, or anyone else that could reasonably foreseeably result in the Defendant communicating (sending or receiving) information that could allow the Defendant to circumvent the Court's intent of significantly limiting the Defendant's ability to control, manage, direct, finance, or otherwise participate in an illegal enterprise;
3. The Defendant shall be permitted to have contact and communications with the following persons:
 - Carol Fardette, Defendant's step-mother
 - Joseph S. Rosenbaum, Esq., counsel for Defendant
 - Kimberly Acevedo, Esq., co-counsel for Defendant
4. These restrictions shall remain in full force and effect until such time that the Defendant demonstrates his communications no longer pose a threat.
5. The Court shall retain jurisdiction to consider any applications by the Defendant, the Defendant's counsel, or the Government, to modify these special conditions of confinement.
6. These restrictions do not, in any way, affect the Attorney General's implementation of Special Administrative Measure (SAM).

DEFENDANT: JAMES SABATINO

CASE NUMBER: 16-20519-CR-LENARD

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

The defendant must report to the probation office in the district to which the defendant is released within 48 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JAMES SABATINO

CASE NUMBER: 16-20519-CR-LENARD

SPECIAL CONDITIONS OF SUPERVISION

Association Restriction - The defendant is prohibited from associating with members of his racketeering endeavors, including but not limited to members of the Gambino Organized Crime Family of La Cosa Nostra or any other known felons while on supervised release.

Disclosure of Telephone Records - The defendant shall provide all personal/business telephone records to the U.S. Probation Officer upon request. Further, the defendant shall provide the U.S. Probation Officer written authorization to request a record of all the defendant's outgoing or incoming telephone calls from any telephone service provider.

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Mental Health Treatment - If appropriate, the defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No New Debt Restriction - The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

Permissible Computer Examination - The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced examinations of the defendant's computer(s) equipment which may include retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with this condition and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Self-Employment Restriction - The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Unpaid Restitution, Fines, or Special Assessments - If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

The defendant shall not be engaged in as an owner, employee, or investor. Or associated in any way, in any business or concern that includes the obtaining of products for purposes of videos, or filming of commercials or any other media.

DEFENDANT: JAMES SABATINO

CASE NUMBER: 16-20519-CR-LENARD

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$10,394,527.65*

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
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Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of \$10,394,527.00. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

*The Government to confirm amount of monies owed, if any to the W Hotel.

DEFENDANT: **JAMES SABATINO**CASE NUMBER: **16-20519-CR-LENARD****SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$100.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE**ATTN: FINANCIAL SECTION****400 NORTH MIAMI AVENUE, ROOM 08N09****MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u> <u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL</u> <u>AMOUNT</u>
Valerie Kay Hunt	\$10,394,527.65	\$1,430,123.00
Jorge Duquen	\$10,394,527.65	\$1,430,123.00
Denise Lewis	\$10,394,527.65	\$1,430,123.00

The defendant shall forfeit the defendant's interest in the following property to the United States:

Money judgment in the amount of \$10,372,250 and items listed in forfeiture Order that was granted in open court on 11/13/17.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-20519-CR-LENARD

UNITED STATES OF AMERICA,

v.

JAMES SABATINO,

Defendant.

**ORDER GRANTING GOVERNMENT'S AGREED-UPON MOTION
REQUESTING IMPOSITION OF COMMUNICATION RESTRICTIONS
PURSUANT TO 18 U.S.C. § 3582(d) AND IMPOSING RESTRICTIONS ON
DEFENDANT'S COMMUNICATIONS PURSUANT TO 18 U.S.C. § 3582(d)**

THIS CAUSE is before the Court on the Government's Agreed-Upon Motion Requesting Imposition of Communication Restrictions Pursuant to 18 U.S.C. § 3582(d) ("Motion," D.E. 269), filed November 13, 2017.¹ The Government filed this Motion in accordance with the terms of the Plea Agreement that Defendant James Sabatino ("Defendant") and the Government executed on September 1, 2017 ("Plea Agreement," D.E. 230). In the Plea Agreement, the parties expressly agreed that the Government would ask the Court to include, as part of Defendant's sentence, an order restricting his communications while incarcerated, pursuant to 18 U.S.C. § 3582(d). In particular, the parties agreed that the Government would request imposition of the following conditions of confinement: (a) Defendant should be confined so that he has no contact with other prisoners; and (b) Defendant's communications should be restricted from all persons

¹ The Court granted the Motion at the sentencing hearing on November 13, 2017. (See D.E. 271.) This Order adopts and supplements that oral ruling.

inside and outside of prison with the exception of his step-mother, his lawyer, and an employee of his lawyer. The parties also agreed that the Government would request that these restrictions remain in place until Defendant has demonstrated his communications no longer posed a threat, and that this Court retain jurisdiction to consider any applications to modify the aforementioned restrictions. (See Motion at 2 ¶ 3; Plea Agreement at 4 ¶ 7(d).)

Having considered the Government's Agreed-Upon Motion, the Superseding Information ("SI," D.E. 214), the Plea Agreement, Defendant's Stipulated Factual Proffer ("Factual Proffer," D.E. 231) and his sworn testimony at the change of plea hearing on September 1, 2017 ("Plea Hearing," D.E. 229²), the Presentence Investigation Report ("PSI," D.E. 264) setting forth the Defendant's relevant conduct and his criminal history, and the record in this case, and being otherwise fully informed in the premises, the Court **GRANTS** the Government's Agreed-Upon Motion Requesting Imposition of Communication Restrictions Pursuant to 18 U.S.C. § 3582(d) (**D.E. 269**) for the reasons set forth below.

I. Findings of Fact

On September 1, 2017, Defendant pled guilty to one count of conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO"), in violation of 18 U.S.C. § 1962(d). (See SI at 1-6; Plea Hearing.) In support of his guilty plea, Defendant

² Although a transcript of the September 1, 2017 change of plea hearing is not yet available – D.E. 229 merely being the minutes from that hearing, the undersigned recalls the admissions and other sworn statements Defendant made at the hearing that led the Court to conclude that a sufficient factual basis existed to support and accept Defendant's guilty plea and adopt the plea agreement.

signed a stipulated factual proffer admitting that he was the organizer and leader of a prison-based criminal organization that, between October 24, 2014 and April 5, 2017, engaged in acts of wire and mail fraud, interstate trafficking of stolen property, obstruction of justice, conspiracy to murder, and other criminal activities in the Southern District of Florida, Southern District of New York, and Northern District of Georgia. (See Factual Proffer at 2-3; Plea Agreement at 1, 6.) Defendant also admitted that during the course of his criminal activities, he sought to have several co-conspirators and witnesses killed. (See Factual Proffer at 2-3, 6-7, 10-11.) Defendant further admitted that he enlisted a number of other individuals, including other inmates, federal corrections officers, and non-incarcerated co-conspirators, to participate in the aforementioned criminal activities. (Id. at 3-11.) Finally, Defendant's extensive criminal history includes various frauds, swindles, and crimes of violence (see PSI at 29-49); many of these crimes were committed while in federal custody (id. at 18, 40, 42, 46).³

³ The parties also agreed that prior to sentencing, the Government would request, pursuant to 28 C.F.R. § 501.3, that the Bureau of Prisons ("BOP"), through the Attorney General, implement Special Administrative Measures ("SAMs") that restricted Defendant's communications in order to prevent violence and/or physical harm to other persons. (See Motion at 2-3; Plea Agreement at 3-4.) For instance, the parties agreed the Government would ask BOP to restrict Defendant's communications to communications with his step-mother and other approved persons, including defense counsel and staff. (See Motion at 3; Plea Agreement at 4.) The Government complied with this provision of the Plea Agreement and the Attorney General authorized the requested SAMs. (See Motion at 3.) While the SAMs significantly restrict Defendant's communications and contacts with others while he is incarcerated, they permit him access to a greater number of family members and thus are slightly less restrictive than the § 3582(d) restrictions requested now by the parties. (Id. at 3-4.) Recognizing that authorization and implementation of SAMs conditions of confinement are solely within the purview of the executive branch, see 28 C.F.R. § 501.3(a), the Government emphasizes that it is not

II. Discussion

The conditions of a prisoner's confinement are usually determined by the Attorney General through the Bureau of Prisons. See, e.g., 18 U.S.C. § 4001(b)(1) (vesting control and management of the federal prisons in the Attorney General); 18 U.S.C. § 4042 (outlining the duties of BOP, under the Attorney General's direction, which includes managing and regulating all federal prisons and the inmates housed therein); see also United States v. Sotelo, 94 F.3d 1037, 1041 (7th Cir. 1996) (explaining that, pursuant to a congressional grant of authority over the treatment and discipline of federal inmates to BOP, that agency promulgated regulations governing the contact of inmates with persons outside the prisons; those regulations specifically authorize a warden to significantly restrict an inmate's communications with persons outside the prison). However, where specific statutory authority exists, a sentencing court may impose conditions on a prisoner's confinement. See United States v. Felipe, 148 F.3d 101, 109 (2d Cir. 1998) (citing United States v. Huss, 520 F.2d 598, 602 (2d Cir. 1975)).

Here, statutory authority exists for this Court to impose on Defendant the conditions of confinement that the parties are jointly requesting. Specifically, 18 U.S.C. § 3582(d) permits a district court to limit the criminal association of a defendant convicted of racketeering activities. This section provides that a court,

in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title . . . or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United

seeking to modify, overrule, or set aside the SAMs (id. at 4), and nothing in this Order should be construed to have such an effect.

States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

18 U.S.C. § 3582(d). See also Felipe, 148 F.3d at 109.

Defendant was convicted of conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act, in violation of 18 U.S.C. § 1962(d), while he was incarcerated at the Federal Detention Center in Miami. See SI; Plea Agreement at 1; Plea Hearing. He therefore is eligible for Section 3582(d) restrictions. 18 U.S.C. § 3582(d).

The request for Section 3582(d) restrictions comes from the Government, as agreed to by the parties. Based on the facts and the record in this case, the Court finds that there is probable cause to believe that Defendant's association or communication with persons other than his step-mother, his attorneys, or the attorney's staff would enable Defendant to "control, manage, direct, finance, or otherwise participate in an illegal enterprise." 18 U.S.C. § 3582(d).

As Defendant admits, from October 2014 through April 2015, while in prison, he was the sole organizer and leader of a prison-based criminal organization (the "Enterprise") that engaged in acts of wire and mail fraud, interstate trafficking of stolen property, obstruction of justice, conspiracy to murder, and other criminal activities. (See Factual Proffer at 2-3; Plea Hearing.) Defendant and his co-conspirators conducted regular meetings in person, telephonically, and by any other means of communication at which they discussed, planned, and otherwise engaged in criminal activity including the

introduction of contraband into federal prisons, bribery, witness intimidation, and murder. (See Factual Proffer at 3; Plea Hearing.)

During this period, while incarcerated, Defendant repeatedly found ways of recruiting and conspiring with co-conspirators. (See Factual Proffer at 3; Plea Hearing.) Notably, between 2015 and 2017, Defendant recruited three co-defendants, two unindicted co-conspirators, two corrections officers, and various other unidentified co-conspirators who operated at his direction in South Florida, Georgia, and New York. (See Factual Proffer at 3-11; PSI at 8-26.) Defendant also recruited other co-conspirators by enlisting associates and family members of person with whom Defendant was incarcerated. (See Factual Proffer at 3, 5, 7-8; PSI at 11, 24-25.)

While incarcerated, Defendant directed co-conspirators to murder and threaten violence against individuals who posed a threat to him or the Enterprise or jeopardized its operations, including witnesses to the illegal activities of the Enterprise. (See Factual Proffer at 2-3, 6-11; PSI at 8-15, 17-24.) In addition, while incarcerated, Defendant successfully procured five contraband cellular telephones that he used to conduct and direct criminal activity and steal millions of dollars in jewelry and other valuables. (See Factual Proffer at 3-10; PSI at 8-9, 23-24.)

Moreover, Defendant previously organized large-scale fraud schemes at other detention facilities. For example, while incarcerated in New York in 2002, Defendant was able to recruit a network of co-conspirators over the course of six months, coercing and threatening these accomplices when they refused to carry out his orders. (PSI at 44-46.) Despite BOP's efforts, Defendant has not ceased his criminal activities -- which

include multiple attempts to have co-conspirators, witnesses, and witnesses' family members killed or injured. (See id. at 25-26; Factual Proffer at 7, 10-11.)

The special conditions of confinement that the parties are proposing are severe. Defendant essentially agreed to solitary confinement and a prohibition on communicating with everyone but his stepmother and two attorneys (at least until he is able to demonstrate his communications no longer pose a threat). Nonetheless, the Government points out that “[t]he parties [] agree that these restrictions, although severe, are appropriate given Defendant’s history and propensity for recruiting co-conspirators through fellow inmates, corrections officers, and persons who are not incarcerated.” (See D.E. 269 at 9.)

In Felipe, the Second Circuit upheld the imposition of special conditions of confinement similar to those that the parties propose in this case. 148 F.3d 101. The defendant in Felipe was the leader of a violent gang who was convicted of participating in racketeering activities while incarcerated. Id. at 109. The district court sentenced the defendant to life in prison and, pursuant to Section 3582(d), ordered that he be prohibited from communicating with everyone but counsel and close family members. Id. at 107.

On appeal, the defendant argued the sentencing court was without authority to impose such stringent conditions of confinement, having failed to identify “a specified person” with whom he was forbidden to communicate, as required by Section 3582(d). Id. at 109. The Second Circuit acknowledged that the language of the statute was not broad, but concluded that the order below did not fall outside the strictures of the statute. Id. at 110. As the Court explained:

We do not believe Congress expected sentencing courts to list every individual of a racketeering organization in cases where sufficient reason exists to believe that association with any member is for the purpose of participating in an illegal enterprise. Racketeering groups are often large and boast a constantly changing membership. It would be difficult, if not virtually impossible, to identify each and every active member of such an organization. The purpose of § 3582(d) “is to prevent the defendant from continuing his illegal activities from his place of confinement.” The conditions imposed upon Felipe were reasonably formulated to accomplish that objective.

Id. (emphasis in original; internal citation omitted).

The Court finds that the proposed restrictions on Defendant’s communications are reasonably formulated to prevent him from using his powers of association to continue his illegal activities while in prison.

III. Conclusion

Accordingly, it is **ORDERED AND ADJUDGED** that the Government’s Agreed-Upon Motion Requesting Imposition of Communication Restrictions Pursuant to 18 U.S.C. § 3582(d) (**D.E. 269**) is **GRANTED** as follows:

1. The Court **ORDERS** the following conditions of confinement for Defendant James Sabatino:

a. Defendant should be confined, within the U.S. Marshals Service/BOP/detention facility’s reasonable efforts and existing confinement conditions, so that he has no contact with other prisoners;

b. Defendant should be limited, within the U.S. Marshals Service/BOP/detention facility’s reasonable efforts and existing confinement conditions, from having contact (including passing or receiving any oral, written, or recorded

communications) with any other inmate, visitor, attorney, or anyone else, that could reasonably foreseeably result in Defendant communicating (sending or receiving) information that could allow Defendant to circumvent the Court's intent of significantly limiting Defendant's ability to control, manage, direct, finance, or otherwise participate in an illegal enterprise;

c. The restrictions specified above should permit Defendant's contacts and communications with the following persons:


- i. Carol Fardette, Defendant's step-mother;
- ii. Joseph S. Rosenbaum, Esq., Counsel for Defendant; and
- iii. Kimberly Acevedo, Esq., Co-Counsel for Defendant; and

d. The restrictions specified above shall remain in place until Defendant demonstrates his communications no longer pose a threat.

2. This Order is not intended to affect, in any way, the Attorney General's order authorizing the Bureau of Prisons to implement, pursuant to 28 C.F.R. § 501.3, Special Administrative Measures (SAMs) relating to Defendant's confinement that are reasonably necessary to protect persons against the risk of death or serious bodily injury.

3. The Court retains jurisdiction to consider any applications made by Defendant, Defendant's attorneys, or the Government to modify these special conditions of confinement.

DONE AND ORDERED in Chambers at Miami, Florida this 20th day of
November, 2017.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

APPENDIX H

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 16-20519-CR-JAL

UNITED STATES OF AMERICA

vs.

JAMES SABATINO,

Defendant.

**GOVERNMENT’S AGREED-UPON MOTION REQUESTING IMPOSITION OF
COMMUNICATION RESTRICTIONS PURSUANT TO 18 U.S.C. § 3582(d)**

The United States of America, by and through the undersigned Assistant United States Attorney, respectfully requests that this Court include as part of the sentence an order restricting Defendant James Sabatino’s (“Defendant[’s]”) communications pursuant to 18 U.S.C. § 3582(d). In support, the government states:

INTRODUCTION

1. On September 1, 2017, Defendant pled guilty to count one of a superseding information charging him with, inter alia, conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act, in violation of 18 U.S.C. § 1962(d). (See Presentence Investigation Report (“PSI”) [ECF No. 257] at 1). Defendant’s sentencing hearing is currently scheduled for November 13, 2017. (Id.).¹

2. In support of his guilty plea, Defendant signed a stipulated factual proffer ([ECF No. 231]) admitting that he was the organizer and leader of a prison-based criminal enterprise engaged in acts of mail and wire fraud, interstate trafficking of stolen property, and obstruction

¹ The government moved to continue the sentencing hearing for a period of thirty days based on the late disclosure of the PSI. (See Gov’t Motion to Continue Sentencing [ECF No. 258]).

of justice. (See Factual Proffer at 2-3, 6-7). During the course of Defendant's criminal activities, Defendant sought to have several co-conspirators and witnesses killed. (Id. at 6-7). Defendant enlisted a number of enterprise members in furtherance of his crimes, including other inmates, Federal corrections officers, and non-incarcerated co-conspirators. (Id. at 4, 7, 8-10). As noted in the PSI, Defendant's extensive criminal history includes various frauds, swindles, and crimes of violence, including assaults and threatening communications. (See PSI at 38, 40, 43, 51-52). Defendant committed many of these crimes while in Federal custody. (Id.).

3. Prior to Defendant's guilty plea, the parties executed a plea agreement ([ECF No. 230]). As part of that agreement, the government, with Defendant and defense counsel's express consent, agreed to file the instant Motion requesting imposition by the Court of certain conditions of confinement including: (a) that Defendant should be confined during the time of his incarceration so that he has no contact with other prisoners, and (b) that Defendant's communications should be restricted from all persons inside and outside of prison. (See Plea Agreement at ¶ 7(d)(i), (d)(ii)). The parties also agreed that the government would request in its Motion that Defendant be allowed to communicate with his step-mother, Defendant's attorney, and an employee of Defendant's attorney. (Id. at ¶ 7(d)(ii)(a)-(c)). The parties further agreed that the government would request in its Motion that (a) the Section 3582(d) restrictions remain in place until Defendant demonstrated his communications no longer posed a threat, and (b) the Court retain jurisdiction to consider any applications to modify the restrictions. (Id. ¶ 7(d)(iii), (d)(iv)).

4. The plea agreement also required the government, again with Defendant and defense counsel's express consent, to request that the Bureau of Prisons (through the Attorney

General) impose Special Administrative Measures (“SAMs”), pursuant to 28 C.F.R. § 501.3.² (Id. ¶ 7(b)). Specifically, the government agreed to request that BOP restrict Defendant’s communications to communications with his step-mother and other approved persons, including defense counsel and his staff. (Id.). The government complied with this provision of the plea agreement several months before the change-of-plea hearing by formally requesting imposition of SAMs.

5. Eleven (11) days after the change-of-plea hearing, the Attorney General granted the government’s request and authorized³ the origination of SAMs based on the substantial risk that Defendant’s communications or contacts with other persons could result in death or serious bodily injury. See 28 C.F.R. § 501.3(a). The SAMs⁴ significantly restrict Defendant’s communications and contacts with others while he is incarcerated. For example, the SAMs prevent Defendant

from having contact (including passing or receiving any oral, written, or recorded communications) with any other inmate, visitor, attorney, or anyone else, . . . , that could reasonably foreseeably result in [Defendant] communicating (sending or receiving) information that could circumvent the SAM’s intent of significantly limiting [Defendant]’s ability to communicate (send or receive) threatening information.

The SAMs do, however, permit Defendant to communicate with his step-mother, immediate family members, Defendant’s attorney, and the aforementioned employee of Defendant’s attorney. Therefore, the provisions of the SAMs concerning permissible contacts are slightly less

² 28 C.F.R. § 501.3(a) states: “Upon direction of the Attorney General, the Director, Bureau of Prisons, may authorize the Warden to implement special administrative measures that are reasonably necessary to protect persons against the risk of death or serious bodily injury.”

³ (See Def. Motion to Strike [ECF No. 238] at 1) (acknowledging “Defendant was served with notice that the Attorney General authorized SAMs”).

⁴ The official document ordering implementation of the SAMs has not been attached to this Motion but will be made available to the Court upon request.

restrictive than those proposed herein, in that they permit Defendant's communications with immediate family members should he choose to have such communications.

6. As noted, the Attorney General has already authorized the above-described SAMs restrictions. This Motion in no way seeks to modify, overrule, or set aside the SAMs. Implementation of SAMs conditions of confinement are exclusively a function of the Executive and the Court is without authority to affect such conditions. See 28 C.F.R. § 501.3(a), (c), (e), (f). Furthermore, although the Court may impose, pursuant to its Section 3582(d) authority, restrictions more severe than those imposed by the SAMs, the Court cannot order less restrictive conditions while the SAMs⁵ remain in place. See *Yousef v. Reno*, 254 F.3d 1214, 1220-21 (10th Cir. 2001) (finding Bureau of Prisons retains discretion as to whether to implement SAMs and how to execute them).

APPLICABLE LAW

7. The conditions of a prisoner's confinement are ordinarily within the sole discretion of the Attorney General through the Bureau of Prisons ("BOP"). See, e.g., 18 U.S.C. § 4001(b)(1) ("The control and management of Federal penal and correctional institutions, . . . , shall be vested in the Attorney General"); 18 U.S.C. § 4042 (outlining BOP's duties under the direction of the Attorney General). See also *United States v. Sotelo*, 94 F.3d 1037, 1041 (7th Cir. 1996) ("Congress has delegated authority over the treatment and discipline of inmates to [BOP]. Pursuant to that grant of authority, [BOP] has promulgated regulations governing the contact of inmates with persons outside the prison, and those regulations specifically authorize a warden to

⁵ Under 28 C.F.R. § 501.3, SAMs may be imposed for up to 120 days or, with the approval of the Attorney General, a longer period of time not to exceed one year. SAMs may be extended thereafter by the Director, Bureau of Prisons, in, increments not to exceed one year "upon receipt by the Director of an additional written notification from the Attorney General, or, at the Attorney General's direction, from the head of a federal law enforcement agency . . . , that there continues to be a substantial risk that the inmate's communications or contacts with other persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons." 28 C.F.R. § 501.3(c).

significantly restrict an inmate's communications with individuals outside the prison") (internal citations omitted); Yousef, 254 F.3d at 1220-21.

8. Accordingly, "except where specific statutory authority exists, the place and conditions of confinement are in the first instance, matters of executive rather than judicial branch authority." United States v. Huss, 520 F.2d 598, 602 (2d Cir. 1975) (footnote omitted).

9. However, 18 U.S.C. § 3582(d) permits a district court, under certain circumstances, to

include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that the association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

18 U.S.C. § 3582(d). By its terms, Section 3582(d) permits the "[i]nclusion of an order to limit criminal association of organized crime and drug offenders." Id. The statute gives the court the discretion to impose limited restrictions on certain kinds of defendants, namely, those "convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or [Title 21 drug offenses], . . ." Id. See also Sotelo, 94 F.3d at 1041 (finding district court lacked authority to impose Section 3582 restrictions on inmate convicted of mailing threatening communications).

10. A sentencing court may not impose Section 3582 conditions sua sponte. "3582(d) requires a motion by the Director of the BOP or a United States attorney to invoke the district court's authority to impose a communication restriction after sentencing. The sentencing court may not, upon its own motion, invoke this same authority." United States v. Allmon, 702 F.3d 1034, 1037 (8th Cir. 2012) (emphasis added).

11. With respect to the kinds of restrictions permitted by Section 3582(d), the case law provides little guidance. See United States v. Corozzo, No. 08-CR-76, 256 F.R.D. 398, 401 (E.D.N.Y. April 23, 2009) (Weinstein, J.) (“Section 3582 is almost never used.”). On its face, the statute permits the Court to enter an order that requires “that the defendant not associate or communicate with a specified person” if “association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.” 18 U.S.C. § 3582(d) (emphasis added).

12. At least one court has recognized the inherent difficulties presented by this “specified person” language, United States v. Felipe, 148 F.3d 101, 110 (2d Cir. 1998), cert. denied, 525 U.S. 907 (1998). There, Felipe, the leader of a violent gang, was convicted on several racketeering charges, including murder, and sentenced to life imprisonment. Id. at 105-06. As part of Felipe’s sentence, the district court imposed “special conditions of confinement,” including a restriction on Felipe’s ability to correspond with anyone except his attorney and close family members. Id. at 107. The district court later altered the communication restriction in response to Felipe’s motion to vacate and set aside the sentence, broadening the restriction to include a few additional individuals not previously contemplated by the restrictions. Id. The court otherwise denied Felipe’s motion to vacate the sentence and also denied a later request by Felipe to have the restriction amended. Id. Felipe appealed, claiming the district court did not have the authority to implement such conditions of confinement and that the conditions violated his constitutional rights. Id. at 109. The Second Circuit, in affirming the restriction, acknowledged that the district court’s order “fails to identify ‘a specified person’ with whom Felipe may not communicate, as required by § 3582(d), but rather forbids communication with

everyone but close family members.” Id. at 110. Nevertheless, the court of appeals found that such a restriction was consistent with Section 3582(d):

While we acknowledge that the language of the statute is not broad, the trial court’s order, in our view, does not fall outside it. We do not believe Congress expected sentencing courts to list every individual of a racketeering organization in cases where sufficient reason exists to believe that association with any member is for the purpose of participating in an illegal enterprise. Racketeering groups are often large and boast a constantly changing membership. It would be difficult, if not virtually impossible, to identify each and every active member of such an organization. The purpose of § 3582(d) is to prevent the defendant from continuing his illegal activities from his place of confinement. The conditions imposed upon Felipe were reasonably formulated to accomplish that objective.

Felipe, 148 F.3d at 110 (internal citation and quotation marks omitted). But see Corozzo, 256 F.R.D. at 400, 402 (questioning whether restriction “barring the defendant from associating or communicating with any member or associate of organized crime during his incarceration and supervised release” was constitutional).

13. Finally, with respect to the timing of Section 3582(d) restrictions, the statute explicitly allows the sentencing court to impose a communication restriction “ ‘at some time other than sentencing.’ ” Allmon, 702 F.3d at 1037 (quoting Dolan v. United States, 130 S.Ct. 2533, 2545 (2010) (Roberts, J. dissenting)). In Felipe, the court of appeals even suggested that a district court maintains jurisdiction⁶ to modify a Section 3582(d) order at any time during the period of incarceration. Id. at 111 (“We are further persuaded . . . by the fact that the same district judge has retained jurisdiction over Felipe’s case to consider either his or [BOP’s] applications to modify the conditions on the basis of any change of circumstances or for any

⁶ In Felipe, the district court, in the judgment and orders imposing the restrictions, explicitly “retain[ed] jurisdiction to consider any application by the defendant or [BOP] to modify the conditions of Mr. Felipe’s incarceration on the basis of any change of circumstances or other just cause.” United States v. Felipe, No. 94CR00395, Judgment (Attached as Attachment “A”) (S.D.N.Y. Feb. 14, 1997); see also United States v. Felipe, No. 94CR00395, Memorandum and Order, 1997 WL 220302, at *3 (S.D.N.Y. April 29, 1997) (Martin, J.) (“the Court has made clear that it is retaining jurisdiction to change any condition that either [BOP] or the defendant can persuade the Court is either inappropriate or unworkable.”).

other just cause.”). But see Corozzo, 256 F.R.D. at 401 (disagreeing and finding that “interference with [BOP’s] execution of a sentence is a dubious extension of court jurisdiction over prison conditions and would normally be considered by a court in the venue in which the prisoner is being held, not by the court that imposed the sentence.”).

ARGUMENT

14. Defendant was convicted of conducting racketeering activities while incarcerated at the Federal Detention Center (“FDC”) in Miami, in violation of 18 U.S.C. § 1962(d). (Superseding Information [ECF No. 214]; Plea Agreement at 1; Sept. 1, 2017 Minute Entry for proceedings held before Judge Joan A. Lenard: Change of Plea Hearing as to James Sabatino held on 9/1/2017 [ECF No. 229]). He is therefore eligible for Section 3582(d) restrictions. 18 U.S.C. § 3582(d).

15. As noted in the factual proffer supporting his plea, Defendant has repeatedly found ways of recruiting and contacting co-conspirators from prison. (Factual Proffer at 3). Notably, between 2015 and 2017, Defendant recruited three co-defendants, two unindicted co-conspirators described in the factual proffer, a corrections officer, and various other unidentified co-conspirators who operated at Defendant’s direction in South Florida, New York, and Georgia. Defendant coordinated with certain co-conspirators repeatedly over the course of two years. (See id. at 7, 8-10). Defendant also recruited co-conspirators by enlisting associates and family members of persons with whom Defendant was incarcerated. (PSI at 8, 9; Factual Proffer at 8). Defendant succeeded, on at least five occasions, in procuring contraband cellular telephones inside FDC, which devices he used to conduct and direct criminal activity and steal millions of dollars in jewelry and other goods. (Factual Proffer at 4-7). Defendant has previously succeeded in organizing large-scale fraud schemes at other detention facilities. (PSI at 43-45). For example,

in 2002, Defendant was incarcerated in the State of New York and was able to recruit a network of co-conspirators over the course of six months, coercing and threatening these accomplices when they refused to carry out his orders. (*Id.* at 45). Notably, Defendant paid fraud proceeds from the 2002 scheme to the same co-conspirator who received stolen goods as a result of Defendant's 2015 crimes. (PSI at 13, 44).

16. Despite BOP's efforts, Defendant has not ceased his criminal activities, which include multiple attempts to have co-conspirators, witnesses, and witnesses' family members harmed or killed. (*See id.* at 7, 10-11; PSI at 25-26). The parties agree that these facts support a finding of probable cause to believe that Defendant's current association or communication with persons other than his step-mother, attorney, and attorney's staff would give Defendant additional opportunities to "control, manage, direct, finance, or otherwise participate in an illegal enterprise." 18 U.S.C. § 3582(d) (requiring finding of probable cause to support restriction).

17. The parties further agree that these restrictions, although severe, are appropriate given Defendant's history and propensity for recruiting co-conspirators through fellow inmates, corrections officers, and persons who are not incarcerated. As noted, the purpose of the proposed restrictions is to prevent Defendant from continuing his illegal activities from his place of confinement; the proposed, agreed-upon restrictions are reasonably formulated to accomplish this objective. *See Felipe*, 148 F.3d at 110.

REQUEST FOR RESTRICTIONS

Accordingly, the Government asks that the following conditions of confinement be imposed at sentencing and reflected in the judgment:

1. Defendant should be confined, within the U.S. Marshals Service/BOP/detention facility's reasonable efforts and existing confinement conditions, so that he has no contact with other prisoners;

2. Defendant should be limited, within the U.S. Marshals Service/BOP/detention facility's reasonable efforts and existing confinement conditions, from having contact (including passing or receiving any oral, written, or recorded communications) with any other inmate, visitor, attorney, or anyone else, that could reasonably foreseeably result in the inmate communicating (sending or receiving) information that could allow the inmate to circumvent the Court's intent of significantly limiting the inmate's ability to control, manage, direct, finance, or otherwise participate in an illegal enterprise;

3. That the restrictions specified above should permit Defendant's contacts and communications with the following persons:

- a. Carol Fardette, Defendant's step-mother;
- b. Joseph S. Rosenbaum, Counsel for Defendant; and
- c. Kimberly Acevedo, Paralegal to Counsel for Defendant.

4. The government further requests that these restrictions remain in place until Defendant demonstrates his communications no longer pose a threat, and that the Court retain jurisdiction to consider any applications to modify these special conditions of confinement.

5. As noted, nothing in the government's Motion seeks, in any way, to modify, overrule, or set aside any provision(s) in the Attorney General's order authorizing SAMs conditions of confinement. Accordingly, the Government requests that this Court's order specifically reflect that it is not intended to affect the Attorney General's implementation of SAMs.

The government has conferred with defense counsel of record, Joseph S. Rosenbaum, Esq., who, as noted, has agreed to the filing of this Motion and to the imposition of Section 3582(d) restrictions.

Respectfully submitted,

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY

By: /s/ Christopher B. Browne
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CERTIFICATE OF SERVICE AND CONFERRAL

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF on November 13, 2017. I further certify that, pursuant to this Court's Local Rule 88.9(a) and prior to filing this motion, I conferred with defense counsel of record, Joseph S. Rosenbaum, Esq., who indicated that he agrees to the filing of the foregoing, agreed-upon motion.

/s/ Christopher B. Browne
Assistant United States Attorney

APPENDIX I

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12916
Non-Argument Calendar

D.C. Docket No. 1:16-cr-20519-JAL-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES PETER SABATINO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(August 17, 2020)

Before WILSON, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

James Peter Sabatino is a federal prisoner subject to special detention conditions that restrict him to communicating with only a small number of people, namely his step-mother and current legal counsel. He appealed the district court's

denial of his post-judgment motion to authorize him to communicate with his former attorney and paralegal. Because the district court has already granted the relief Sabatino seeks, we dismiss his appeal as moot.

I.

In 2017, Sabatino entered into a plea agreement and then pled guilty to conspiring to conduct a racketeering enterprise, in violation of 18 U.S.C. § 1962(d). Under the terms of the agreement, the government would request that the district court and the Bureau of Prisons (“BOP”) impose certain communication restrictions on Sabatino during his incarceration. Sabatino agreed that those restrictions, also known as Special Administrative Measures, would prohibit him from communicating with anyone other than his attorney, Joseph S. Rosenbaum; Kimberly Acevedo, who was then a paralegal and is now an attorney; and his step-mother, Carol Fardette. Sabatino and the government agreed these restrictions would remain in place until “such time as when [Sabatino] demonstrate[s] his communications no longer pose a threat.” They also stipulated that the district court would “retain jurisdiction to consider any applications [to] modify these special conditions of confinement.”

Following Sabatino’s change-of-plea hearing, and prior to sentencing, the government requested the district court restrict Sabatino’s communications, consistent with the plea agreement. At the sentencing hearing, the district court

sentenced Sabatino to 240-months imprisonment and imposed the restrictions requested by the government. After the hearing, the district court issued a written order granting the government's motion to impose communications restrictions.

In July 2018, the Federal Public Defender requested the district court appoint substitute counsel to represent Sabatino on appeal due to a conflict. The district court granted the motion and appointed Ivy Ginsberg as Sabatino's appellate counsel, pursuant to the Criminal Justice Act ("CJA"). Rosenbaum remained as Sabatino's counsel in the district court. In October 2018, the district court granted Sabatino's motion to modify his communications restrictions so he could communicate with Ginsberg about his appeal. The following month, Sabatino moved the district court to appoint Ginsberg as his attorney in district court as well, joining Rosenbaum. The court denied the motion, on the ground that two court-appointed attorneys were not needed to represent Sabatino in his district court proceedings. Sabatino filed a motion to reconsider which requested the district court appoint Ginsberg as his sole attorney in district court. The district court granted the motion, substituted Ginsberg as Sabatino's district court counsel, and terminated Rosenbaum as counsel of record.

In April 2019, Sabatino filed a pro se motion requesting that the district court order the BOP to allow him to communicate with Rosenbaum. His motion stated that a letter he sent to Rosenbaum was returned undelivered after the

prison's legal department determined that, because Rosenbaum had been terminated as counsel of record, Sabatino's communication restriction order prohibited him from communicating with Rosenbaum. The district court denied Sabatino's motion. The court said that, because Rosenbaum no longer represented Sabatino, Sabatino was no longer permitted to communicate with him or Acevedo.

In May 2019, Sabatino, now with aid of counsel, again moved for authorization to communicate with Rosenbaum and Acevedo. His motion explained that Rosenbaum continued to represent him as attorney of record in three other cases and was best positioned to communicate with him about those cases. Sabatino also argued that the district court lacked authority to add a communication restriction without a motion from the director of the BOP or the United States Attorney. On July 10, 2019, the district court denied the motion, noting only that the other cases in which Rosenbaum was Sabatino's counsel of record had all been closed.

Sabatino filed a notice of appeal and moved the district court to stay its order denying his motion to communicate with Rosenbaum and Acevedo. In October 2019, the district court entered an order stating it would reconsider its July 2019 order if our Court relinquished jurisdiction over the appeal. Sabatino then filed a motion asking this Court to stay the appeal pending the district court's ruling on

his motion to reconsider. This Court granted his motion to stay the appeal. United States v. Sabatino, No. 19-12916 (11th Cir. Oct. 15, 2019).

The appellate briefing schedule now stayed, Sabatino moved the district court to reconsider its July 2019 order. The same day, Ginsberg requested to withdraw as CJA counsel of record and that Rosenbaum be reappointed as CJA counsel. On November 6, 2019, the district court granted Ginsberg's motion to withdraw and reappointed Rosenbaum as Sabatino's CJA counsel in district court. Because Rosenbaum and Acevedo's reappointment as counsel meant Sabatino could communicate with them once more, the court denied as moot Sabatino's motions for reconsideration and stay of the July 2019 order. Sabatino proceeded with his appeal and filed his opening brief on November 14, 2019.

II.

Mootness is jurisdictional and must be resolved before the merits of the case. Al Najjar v. Ashcroft, 273 F.3d 1330, 1336 (11th Cir. 2001) (per curiam). We review de novo questions of jurisdiction, including mootness. See United States v. Cartwright, 413 F.3d 1295, 1299 (11th Cir. 2005) (per curiam); see also CAMP Legal Def. Fund, Inc. v. City of Atlanta, 451 F.3d 1257, 1268 (11th Cir. 2006).

III.

Sabatino appeals the district court's July 10, 2019, denial of his motion to authorize communication with Rosenbaum and Acevedo. After Sabatino filed a

notice of appeal, the district court issued an order authorizing him to communicate with Rosenbaum and Acevedo. Because Sabatino has already obtained the relief he sought, he can obtain no meaningful relief from this Court and his appeal is moot.

Under Article III of the Constitution, a federal court's jurisdiction is limited to active "Cases" and "Controversies." U.S. Const. art. III, § 2. A case on appeal becomes moot, and ceases to be an active case or controversy, if events occur after the filing of the appeal that deprive the appeals court of the ability to give the appellant meaningful relief. See also Christian Coal. of Fla., Inc. v. United States, 662 F.3d 1182, 1189–90 (11th Cir. 2011) (holding that a case or controversy must exist at all stages of review). When this happens, the appeal must be dismissed. Soliman v. United States ex rel. INS, 296 F.3d 1237, 1242 (11th Cir. 2002) (per curiam). "Any decision on the merits of a moot case or issue would be an impermissible advisory opinion." Fla. Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't of Health & Rehab. Servs., 225 F.3d 1208, 1217 (11th Cir. 2000).

Here, the district court granted the relief Sabatino seeks, so there is no longer meaningful relief to be obtained from our Court and the appeal must be dismissed as moot. See Soliman, 296 F.3d at 1243 (dismissing as moot an appeal related to immigration detention conditions because the detainee received the requested relief). In his motion to stay briefing in this Court, Sabatino acknowledged that

“[i]f the district court reconsiders its prior order and grants the motion to authorize communication with attorneys Rosenbaum and Acevedo, then the appeal before this court would be unnecessary.” But after the district court issued an order allowing Sabatino to communicate with Rosenbaum and Acevedo, Sabatino nonetheless continued his appeal. He now requests that we “remand to the District Court with instructions on the proper way of evaluating this and future Modifications to the communication restrictions.” That is nearly the definition of a purely advisory opinion, which we lack jurisdiction to issue. See Miller v. FCC, 66 F.3d 1140, 1145 (11th Cir. 1995) (“By asking this court to decide what another court should do in a future case, petitioners are posing a hypothetical question, the answer to which would be an advisory opinion.”).

Sabatino argues that his case is not moot under the voluntary cessation doctrine. Under that rule, a defendant’s voluntary cessation of a challenged practice “does not automatically moot the case” unless it is “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” United States v. Askins & Miller Orthopaedics, P.A., 924 F.3d 1348, 1355 (11th Cir. 2019) (quotation marks omitted). But the conduct at issue in this case does not fall under the voluntary cessation doctrine, since Sabatino’s renewed ability to communicate with Rosenbaum and Acevedo only came about pursuant to a court order.

Sabatino also argues his appeal is not moot because the communication restrictions he challenges are “very likely to recur in the future.” It is true that there is a “narrow exception” to the mootness doctrine when the action challenged in a lawsuit is “capable of being repeated and evading review.” Soliman, 296 F.3d at 1242–43. But this exception applies “only in the exceptional circumstance in which the same controversy will recur and there will be inadequate time to litigate it prior to its cessation.” Al Najjar, 273 F.3d at 1340. Sabatino has not shown that he is likely to be barred from communicating with Rosenbaum or Acevedo in the future. And in the event that he is, he has not argued that he would have inadequate time to litigate that issue. See id. at 1342 (holding that the remote possibility of recurrence is not enough to overcome mootness, “and even a likely recurrence is insufficient if there would be ample opportunity for review at that time”). Sabatino therefore has not shown that this exception to mootness applies to his appeal.

IV.

On this record, there is no active case or controversy in this appeal and we dismiss it as moot.

APPEAL DISMISSED.

APPENDIX J

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12916-HH

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES PETER SABATINO,
a.k.a. James Prolima,
a.k.a. Jimmy Prolima,
a.k.a. James Harvey,
a.k.a. Lenny Santiago,
a.k.a. Jimmy Gutta,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

APPENDIX K

**UNITED STATES COURT OF APPEALS
For the Eleventh Circuit**

No. 19-12916

District Court Docket No.
1:16-cr-20519-JAL-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES PETER SABATINO,
a.k.a. James Prolima,
a.k.a. Jimmy Prolima,
a.k.a. James Harvey,
a.k.a. Lenny Santiago,
a.k.a. Jimmy Gutta,

Defendant - Appellant.

Appeal from the United States District Court for the
Southern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: August 17, 2020
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna H. Clark